Sawy. 7 19-146

Carpenter for appellant
argues orally

Judge Davis.
Bill filed
this foul week

Revised —

Judge Hunt dissented

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~399.~~ 184

EPHRAIM S. [redacted]WYER, APPELLANT,

vs.

HENRY PRICKETT AND CHARLOTTE PRICKETT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 18, 1872.

Oct. 1873

SUPREME COURT OF THE UNITED STATES.

No. 399.

EPHRAIM S. SAWYER, APPELLANT,

vs.

HENRY PRICKETT AND CHARLOTTE PRICKETT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Bond for costs	2	1
Bill of complaint	3	2
Writ of subpœna	9	4
Appearance of defendants	11	5
Stipulation extending time to answer	12	5
Answer of defendants	12	6
Replication to answer	24	10
Stipulation to take proofs before Moulton	26	11
to set cause down for hearing, &c	27	11
as to taking proofs	28	12
as to taking proofs	28	12
Complainant's objections to testimony	29	12
TESTIMONY READ IN EVIDENCE.		
Deposition of H. Prickett	30	13
Second deposition of H. Prickett	98	44
Exhibit A, being agreement between R. R. Co. and Prickett	40	17
Exhibit B, being stock-certificate	41	18
Deposition of A. Gardner	42	18
Geo. Andrews	53	22
J. Imson	58	25
J. C. McKesson	62	26
Stipulation to omit Exhibit C, (being copy of charter)	69	29
Deposition of E. S. Sawyer	69	30
Exhibit 1, (mortgage)	89	39
2, (note from Prickett to R. R. Co.)	93	41
3, (assignment of note and mortgage to Barns)	94	41
4, (assignment of note and mortgage to complainants	97	43

	Original.	Print.
Deposition of H. Gibbs	100	45
D. A. Potter	102	45
R. G. McClellan	104	47
S. M. Stevens	106	48
J. S. Burrows	108	48
W. A. McConnel	110	49
W. A. McConnel	112	50
P. Forbes	123	55
W. G. Parsons	148	68
John Sibley	159	74
P. Belden	174	81
Appeal bond	190	88
Order of court restoring burnt records	192	89
Stipulation to restore records	193	89
Order of reference to Moulton to take proofs	194	90
Order setting cause for hearing	194	90
Decree of dismissal	195	90
Certificate to transcript	196	91

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, in chancery, before the Hon. Henry W. Blodgett, district judge of the United States for said district and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, and of the Hon. Thomas Drummond, circuit judge of the United States for the seventh judicial circuit, sole judge of said circuit court, on Friday, the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and seventy, and of our Independence the ninety-fifth year.

WILLIAM H. BRADLEY, *Clerk.*

Chancery.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT & CHARLOTTE PRICKETT. } 8440. Original bill.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the eleventh day of June, in the year of our Lord one thousand eight hundred and sixty-eight, came Ephraim S. Sawyer, complainant, by Messrs. D. C. & I. J. Nicholes, his solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said dis-
2 trict, his bill of complaint against Henry Prickett and Charlotte Prickett, his wife, defendants; and, also, at the same time, filed his bond for costs in said entitled cause; which said bond and said bill are in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court.—June term A. D. 186'.

EPHRAIM SAWYER
vs.
HENRY PRICKETT & CHARLOTTE PRICKETT. } In chancery.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, we hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated this eleventh day of June, A. D. 1868.

D. C. & I. J. NICHOLES.

(Endorsed:) Filed June 11th, A. D. 1868. W'm H. Bradley, clerk.

3 *Bill of complaint.*

In the circuit court of the U. S. for the northern district of Illinois.
In chancery.

To the judges of the circuit court of the United States:

Ephraim S. Sawyer, of Burlington, in the State of Wisconsin, and a citizen of the State of Wisconsin, brings this, his bill, against Henry Prickett and Charlotte Prickett, his wife, of the county of McHenry, in the State of Illinois, and citizens of the State of Illinois, and of the said northern district of Illinois; and thereupon your orator complains and says that, on the first day of September, in the year one thousand eight hundred and fifty-seven, the said Henry Prickett executed under his hand, and delivered to the Fox River Valley Railroad Company, a body corporate, created by the laws of the State of Wisconsin, a promissory note bearing date on that day, in and by which said promissory note the said Henry Prickett, in consideration of being justly indebted to the said Fox River Valley Railroad Company in the sum of two thousand dollars, for full value received, promised to pay to the said Fox River Valley Railroad Company, or order, the sum of two thou-
sand dollars at the expiration of ten years from the first day
4 of September, in the year of our Lord one thousand eight hundred and fifty-seven, together with the interest thereon, at the rate of eight per cent. per annum, payable annually, on the first day of September, in each year after date, principal and interest payable at the office of said company, in the city of Milwaukee, in the State of Wisconsin, as by the said note, ready to be produced by your orator, as this court shall direct, will more fully appear, and to which, when produced for greater certainty, your orator prays leave to refer. And the said Henry Prickett and Charlotte Prickett, his wife, to secure the payment of the principal and interest mentioned in said promissory note, did, at the same time, execute under their hands and seals, and deliver to the said Fox River Valley Railroad Company, a certain indenture of mortgage, bearing even date with the said promissory note, by which said mortgage the said Henry Prickett and Charlotte Prickett did grant, bargain, and sell unto the said Fox River Valley Railroad Company and their assigns forever all that certain real estate situated in the county of McHenry, in the State of Illinois, and known and described as follow', to wit: the southwest quarter of the southwest quarter of section number thirty-four; also, the northeast quarter of the northwest quarter of section thirty-three; also, the southeast quarter of the northwest
quarter of section number thirty-three, all in township number
5 forty-six north, of range eight east, of the third principal meridian, containing in all one hundred and twenty acres of land according to the Government survey, be the same more or less: to have and to hold the above-bargained premises, with the appurtenances, unto the said Fox River Valley Railroad Company and their assigns forever, provided always, and the said mortgage was therein declared to be upon conditions nevertheless, that if the said Henry Prickett and Charlotte Prickett, his wife, their heirs, executors, administrators, or assigns, should well and truly pay or cause to be paid to the party of the second part in said mortgage, the said Fox River Valley Railroad Company or their assigns, the said sum of two thousand dollars in ten years from said first day of September, A. D. 1857, and interest thereon from and after said first day of September, A. D. 1857, at the rate of eight per cent. per annum, according to the tenor and effect of said promisso'

note, and should pay all taxes and assessments upon said premises and every part thereof at the time when the same should become due, that then the said note and the said mortgage should be null and void; in which said mortgage was contained a power for said Fox River Valley Railroad Company or their assigns, in the case of the non-payment of the said sum and interest mentioned in said promissory note, or any part thereof, at the time or times limited in said mortgage for
6 the payment thereof, or in case of the non-payment of any taxes that should be assessed upon said premises in the manner specified in said mortgage, that then, and in either case, it should be and might be lawful for the said Fox River Valley Railroad Company, the party of the second part in said mortgage, or their assigns, and the said Henry Prickett and Charlotte Prickett, the parties of the first part in said mortgage, did, in said mortgage, covenant and agree, and empower and authorize, the said Fox River Valley Railroad Company or their assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances thereunto belonging at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his or their heirs, and assigns, forever, good, ample, and sufficient deeds of conveyance in law, in pursuance to the statute in such case made and provided, which said mortgage was duly acknowledged by the said Henry Prickett and Charlotte Prickett, his wife, and filed for record in the recorder's office in McHenry County, on the fourth day of January, A. D. 1858, at eight o'clock p. m., and duly recorded in volume number fifteen of mortgages, on page number thirteen, as by the said indenture of mortgage now in the possession of your orator and ready to be produced and proved as your honor shall direct, reference being thereto had, will more fully and at large appear.

7 And your orator further states that the said promissory note and mortgage have been duly assigned to your orator for a valuable consideration and are now held and owned by your orator, and your orator believes and states that the said Henry Prickett and Charlotte Prickett, his wife, have made default in the payment of said promissory note and the interest thereon; and that the sum of two thousand dollars, with interest at the rate of eight per cent. per annum from the first day of September, one thousand eight hundred and fifty-seven, remains due and unpaid to your orator, and that no proceedings at law have been had to recover the debt secured by said promissory note and mortgage or any part thereof. To the end, therefore, that the said Henry Prickett and Charlotte Prickett, his wife, may, if they can, show cause why your orator should not have the relief hereby prayed, and may, according to the best of their and each of their knowledge, remembrance, information, and belief, full, true, and perfect answer make to all and singular the statements and charges above set forth, (such answer being without oath, an answer under oath being hereby waived;) and that an account may be taken by and under the direction of this court of what is due to your orator for principal and interest on the said mortgage; and that the said defendant may be decreed to pay your orator what may be found due to him on taking such ac-
8 count as aforesaid, together with the costs and charges in this behalf expended, by a day to be appointed by this court; and, in default thereof, that the said defendant above-named, and all persons claiming or to claim under them or either of them, or otherwise, may be foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part thereof, with the appurtenances, and may deliver over to your orators all deeds, demises, and writings

relating to or concerning the same; and that all and singular said mortgaged premises, with the appurtenances, may be sold under the decree of this court, and that out of the money arising from the sale thereof he may be paid the principal sum due on said note and mortgage, and all interest-money due and to become due thereon, together with all costs and charges by him in this behalf sustained, or that he may have such other or further relief in the premises as may seem proper and shall be agreeable to equity and good conscience:

May it please your honor to grant unto your orator the people's writ of subpœna, to be issued under the seal of this court, directed to said Henry Prickett and Charlotte Prickett, therein and thereby commanding them, on a certain day and under a certain penalty, to be and appear before your honor in this court, then and there to answer this
9 bill of complaint and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience; and your orator will ever pray, &c.

EPHRAIM S. SAWYER,
By D. C. AND I. J. NICHOLES,
His Sol's.

D. C. and I. J. NICHOLES, *Compl's Sol's.*
D. C. NICHOLES, *of Counsel.*

(Endorsed:) Filed June 11, 1868. W'm H. Bradley, cl'k.

And on the same day, to wit, the eleventh day of June, A. D. 1868, the said complainant sued out of said court a process of subpœna in chancery against the defendants in said bill; which said subpœna, together with the marshal's return thereon, are in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to Henry Pricket' and Charlotte Prickett, greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Mon-
10 day in the month of July next, to answer the bill of complaint of Ephraim S. Sawyer, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this eleventh day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of our Independence the ninety-second.

[SEAL.] W'M H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is re-

turnable, the complaint will be taken against them as confessed and a decree entered accordingly.

W'M H. BRADLEY, *Clerk.*

11 Executed the within writ by delivering a true copy of this writ to the within-named Henry Prickett and Charlotte Prickett this 24th day of June, A. D. 1868.

J. R. JONES, *U. S. Marshal.*
By P. MUNSON, *Deputy.*

And afterwards, to wit, on the third day of August, A. D. 1868, the said defendants, by their solicitors, enter their appearance in said court to said bill, in the words and figures following, to wit:

Appearance.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States circuit court.

HENRY PRICKETT & CHARLOTTE PRICKETT *ads.* EPHRAIM SAWYER. } In chancery.

And now come the said defendants, by Miller, Van Arman & Lewis, their solicitors, and enter their appearance herein.

MILLER, VAN ARMAN & LEWIS,
Sol's for Def'ts.

(Endorsed:) Filed August 3d, 1868. W'm H. Bradley, cl'k.

12 And afterwards, to wit, on the 7th day of September, A. D. 1868, the following stipulation was filed in said cause, to wit:

Stipulation.

Circuit court of the United States, northern district of Illinois.

EPHRAIM S. SAWYER *vs.* HENRY PRICKETT & CHARLOTTE PRICKETT. } In chancery.

It is hereby stipulated and agreed that the defendants in the above-entitled cause have until the twentieth (20th) day of September instant, 1868, to file their answer to the bill of complaint herein.

MILLER, VAN ARMAN & LEWIS,
Sol'rs for Def'd'ts.
D. C. & I. J. NICHOLS, *Att'ys Compl't.*

(Endorsed:) Filed Sept. 7th, 1868. W'm H. Bradley, cl'k.

And afterwards, to wit, on the 21st day of September, 1868, the said defendants, by their counsel, filed in said court, in said cause, their answer to said bill of complaint in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:
United States circuit court.

13 The answer of Henry Prickett and Charlotte Prickett, his wife defendants, to the bill of complaint of Ephraim S. Sawyer, complainant.

These defendants, now and all times hereafter saving and reserving unto themselves all benefit and advantage of exceptions which can or may be had to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say that it is true, as alleged in said bill, that on or about the first day of September, A. D. 1857, the said Henry Prickett made and executed his certain promissory note, bearing date the day and year aforesaid, whereby he, the said defendant, Henry Prickett, promised to pay to the order of the Fox River Valley Railroad Company, ten (10) years after the date thereof, the sum of two thousand dollars, ($2,000,) with interest thereon at the rate of eight per cent. per annum, interest and principal payable at the office of said company, in the city of Milwaukie, in the State of Wisconsin, and that to secure the payment of the said note the said defendants made and executed to the said Fox River Valley Railroad Company a certain indenture of mortgage upon the real estate described in and conditioned as is set forth in said bill of complaint.

14 And further the said defendants aver, and so charge the truth to be, that it is not true that the said note and mortgage is now and has been assigned and transferred to the said complainant for a good and valuable consideration, and that the same are now held and owned by said complainant, as is falsely alleged in said bill.

And further, the said defendants aver that on the said first day of September, A. D. 1857, and for many years previous thereto, the said Henry Prickett was and is now the owner of the real estate in the said bill described, and that at the date last named, and for many years previous thereto, the said defendants occupied and resided therein & still do occupy and reside therein as their homestead.

And further, the said defendants aver that the said real estate is situate near the town of Richmond, in McHenry County, in the State of Illinois, and is one mile distant south of the Wisconsin State-line; that the said Henry Prickett, at the time of the date last named and during his whole life previous thereto, had been and now is a farmer by occupation, and at the date last named was entirely ignorant of and unacquainted with general business, except only so far as it pertained to the general and usual routine in the management of his farming affairs.

15 And further, the said defendants aver that, a short time prior to the date last-named one, a Mr. Conover and William G. Parsons, of the said city of Milwaukie, together with John Sibley and William A. McConnell, of the town of Richmond, aforesaid, publicly stated, and caused it to be understood and believed by the inhabitants of the said town of Richmond and vicinity, that a railroad company had been incorporated under the laws of Wisconsin aforesaid, and

known as the Fox River Valley Railroad Company, for, and that the object and design of the said corporation was, the constructing and operating of a railroad from said town of Richmond to said city of Milwaukie, a distance of about fifty (50) miles; that said company was fully organized, and that said railroad *company* would be constructed and in full operation within one year from the said first day of September.

And further, that the said parties above named, for the purpose of inducing the property-owners in said town of Richmond and vicinity to take an interest in said railroad, and to subscribe for the capital stock of said company, resorted to every unfair, unjust, fraudulent, and deceitful artifice, and design, and representation; that for this purpose they caused a subscription-book for the taking of subscriptions to said capital stock to be prepared and opened at said town of Richmond;
16 that they caused the said William A. McConnell, a man of large means, and one in whom, at that time, the citizens and residents of said town of Richmond and vicinity had full and implicit confidence as a man of strict business integrity and good judgment, and of careful, prudent, and sagacious business management, to head said subscription-list, so opened as aforesaid, as a subscriber to the capital stock of said company to the amount of fifteen hundred dollars—($1,500;) that, for the purpose aforesaid, the said parties caused John Woodell, a citizen of Richmond, and a man at that time of considerable means and of good business reputation, to appear in said subscription-list as a subscriber to the capital stock of said company to the amount of one thousand dollars; and, also for the purpose aforesaid, caused to be represented and believed among the residents of said town of Richmond and vicinity that John Sibley, a person at that time of means and large influence in that community and of good business integrity, had subscribed largely to the capital-stock of said company; that said railroad when constructed would greatly enhance the real estate and other property in said town of Richmond and vicinity, by furnishing a market in the said city of Milwaukie for the farm products raised in the vicinity of said town of Richmond, and that the said market, especially for the sale of wheat, would be much more advan-
17 tageous to the farming community of Richmond, aforesaid, than the market afforded at Chicago.

That the said parties, for the purpose aforesaid, publicly represented and caused it to be believed by the residents and property-owners of said town of Richmond and vicinity, that said company would pay large dividends upon its capital stock; that farmers and parties owning real estate could become the owners of so much of the said capital stock as they should subscribe for, by giving their notes for the amount so subscribed to said company on long time and drawing interest at eight per cent. per annum, and securing said notes by mortgage upon their farms or other real estate; that said company would promptly pay all the interest upon said notes so given as the same should mature, out of the dividends that would from time to time be declared upon the capital stock of said company, and that the balance of said dividends, after the payment of said interest, would be amply sufficient to pay the principal of said notes when the same should become due and payable.

And further, the said defendants aver that, in the manner and by the means aforesaid, the said parties hereinbefore named aroused and caused a great interest and unusual excitement among the citizens, residents, and property-holders of the said town of Richmond and vicinity regarding the said railroad, and large numbers of them, relying upon the

18 flattering representations made, as aforesaid, were prevailed upon to subscribe to the capital stock of said company; that the said defendant, Henry Prickett, was among those who, by the means, in the manner, and upon the representations made, as aforesaid, became and was interested in said railroad project; and that after he, said Prickett, had thus become informed thereof, and of the general features of said railroad project, as hereinbefore set forth, and had become greatly excited on account thereof, a short time prior to the said first day of September, A. D. 1857, the said Conover and Sibley, at Richmond, aforesaid, presented said railroad project in detail to said defendant, Henry Prickett, for the purpose of inducing him to become a subscriber for a portion of the capital stock of said company, and with this design and object, presented said subscription-book to the said defendant, Henry Prickett, in which subscription-book, at the time when so presented, said McConnell, who was well known to this defendant as a man of large influence, and in whose judgment, business integrity, caution, and prudence this defendant had implicit confidence, appeared as the first subscriber for the sum of fifteen hundred dollars ($1,500) of the capital stock of said company, and that with a view of so inducing this defendant to become a subscriber, as aforesaid, at the date last named, the said Sibley, who was also known to the said defendant, Prickett, and in whose judgment and business integrity the said defendant
19 had great confidence, stated to said defendant, Prickett, in the presence of said Conover, that he, said Sibley, had become a subscriber to the capital of said company, and had given his note therefore and a mortgage upon his house and lot to secure the same, and the said John Woodell, who was also known to this defendant, Henry Prickett, and in whose integrity the said defendant had implicit confidence, appeared in said subscription-book as a subscriber for one thousand dollars ($1,000) to the capital stock of said company; that at the date last-named the said Conover represented to the said defendant, Henry Prickett, that he was one of the officers of said company, and as the said defendant now remembers one of the directors of said company; that at that time the said Conover & Sibley represented to the said defendant that the said company was duly incorporated and fully organized, and that it would construct and equip said road and have the same in full and complete operation within one year from the date last aforesaid; that said railroad when constructed would greatly enhance the value of said defendant's real estate, by furnishing better market facilities, as hereinbefore stated; that said defendant, Prickett, would not be required to pay any money for the capital stock so subscribed for by him, but that the said company would take in lieu of such money the note of said defendant, Henry Prickett, payable in ten years from date, with interest thereon at eight per cent. per annum, secured by a mortgage of
20 the land owned by said defendants mentioned in said bill of complaint; that said railroad would earn large dividends, and that said company would pay the interest upon said note as it should mature, and that, with the excess of said dividends, the said company would be amply able to pay the principal of said note when it should become due.

And further the said defendants aver that the said defendant Henry Prickett, reposing the utmost confidence in the representations made to him as aforesaid, and believing the same to be true, that said McConnell, Woodell, and Sibley were bona fide stockholders in said company, the said McConnell and Woodell, for the amount stated in said subscription-book, and included thereby, relying upon their acts in the

premises then and there, upon the terms aforesaid, subscribed for two thousand dollars ($2,000,) of the capital stock of said company, and then and there executed the note and together with the said defendant Charles Prickett, to secure the same, executed the mortgage in said bill of complaint mentioned, and thereupon received in return a certificate from what purported to be the Fox River Valley Railroad Company, a copy of which is hereto attached marked "Exhibit A," and made a part hereof; that no stock has ever been tendered or offered to said Henry Prickett; and that the said certificate is the only consideration he has received for the said note and mortgage.

21 And the said defendants aver that, as they are informed and believe, and so charge the truth to be that the Fox River Valley Railroad Company was never incorporated; that the said railroad company has not, nor has any one in its behalf, constructed said railroad from Milwaukee to Richmond or any part thereof; that after obtaining the notes and mortgages of the said defendant as above-mentioned, together with the note and mortgage of other parties, said railroad project was given up and entirely abandoned; that the said Conover and others, professing to act as the officers and agents of said company, and to induce the said defendant to become a subscriber to raise capital stock, fraudulently and secretly agreed with said McConnel and Woodell that the amounts appearing upon the subscription-book aforesaid should be a greater amount than actually subscribed and paid for by them; that it was fraudulently agreed as aforesaid, that said McConnel should only be required to pay five hundred dollars ($500) of the fifteen hundred dollars of the capital stock so subscribed for by him; that it was fraudulently agreed as aforesaid that said Woodell should only be required to pay five hundred dollars of the sum of one thousand dollars of the capital stock so subscribed for by him.

And further the said defendants aver and so charge the truth to be that the said Sibley above named never subscribed for any portion of the capital stock of said company, nor did he ever execute to said

22 company, or to any one for said company, his note and mortgage to secure the same, as stated by him to this defendant in the presence of said Conover as aforesaid.

And further the said defendants aver and so charge the truth to be that each and all of said representations so made to the said defendant as aforesaid, were made to said defendants with the knowledge and by the procurement of the projectors, managing officers, and agents of said company, and for the purpose of cheating and defrauding the said defendants, and that each and all of said representations were wholly untrue and well known to said projectors, managing officers, and agents to be untrue when the same were made.

And further, the said defendants aver that the said complainant is not a bona-fide holder and assignee of said note and mortgage, but are informed and believe and so charge the truth to be that said complainant either was one of the projectors, managers, officers, or agents of said company at the time said note and mortgage were given, or if he ever became the assignee of said note and mortgage, he well knew before becoming such assignee, that the same were procured through and by means of the fraudulent representations aforesaid, and without any valuable consideration whatever given therefor.

And further, the said defendants aver and so charge the truth to be that, if the said Fox River Valley Railroad Company ever had a

23 corporate existence, it never had any property or effects of any kind, and that its capital stock never had any pecuniary value

whatever, and that said company has long since forfeited its corporate powers, and had so forfeited the same at the time of the transfer of said note and mortgage, if any such transfer has been made.

And the said defendants submit and insist that the said complainant ought not to recover herein, and they deny all combinations and confederacy by which they are in said bill charged, without this, that there is any other matter of thing in the said bill contained, and not herein and hereby well and sufficiently answered unto, confessed, and avoided, traversed or denied, is true to their knowledge or belief. All which matters and things these defendants are ready to aver, prove, and maintain as this honorable court shall direct, and pray hence to be dismissed with their costs and charges in this behalf most wrongfully sustained.

HENRY PRICKETT.
CHARLOTTE PRICKETT.
Per MILLER, VAN ARMAN & LEWIS,
Their Sol's.

MILLER, VAN ARMAN & LEWIS,
Sol's for Defendants.

24 EXHIBIT A.

Stock certificate.

To the secretary of the Fox River Valley Railroad Company of Wisconsin.

SIR: This is to certify that Mr. Henry Prickett, of McHenry Co., Illinois, is entitled to a certificate of twenty shares of the capital stock of the Fox River Valley Railroad Company, he having executed a mortgage for the same to this company, provided the property described in said mortgage is free from other incumbrance.

Dated September 1st, 1857.

W'M G. PARSONS,
Stock Agent.

(Endorsed:) Filed Sept. 21, 1868. W'm H. Bradley, cl'k.

And afterwards, to wit, on the twenty-second day of January, A. D. 1869, the said complainant, by his solicitors, filed in said court his replication in said cause in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA,
Northern Dist. of Illinois, ss:

United States circuit court.

25 The replication of Ephraim S. Sawyer, complainant, to the answer of Henry Prickett et al, defendant'.

This repliant, saving and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the

law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by said bill he has already prayed.

NICHOLLS & MORRISON,
Sol's for Complainant.

(Endorsed:) Filed Jan'y 22d, 1869. W'm H. Bradley, cl'k.

And afterwards, to wit, on the first day of November, A. D. 1869, the said parties, by their solicitors, filed in said court their stipulation in said cause in the words & figures following, to wit:

26 UNITED STATES OF AMERICA,
Northern District of Illinois:

United States circuit court.

EPH'AM S. SAWYER
vs.
HENRY PRICKETT & CHARLOTTE PRICKETT. } In chancery.

It is hereby stipulated and agreed that the above-entitled cause shall be referred to J. Tilden Moulton, master, to take proof and report.
Oct. 26, '69.

BENNETT & ULLMANN,
Compl'ts Sol'rs.
MILLER, VAN ARMAN & LEWIS,
Sol's for Def'ts.

(Endorsed:) Filed Nov. 1st, 1869. W'm H. Bradley, cl'k.

27 The following stipulation, signed by the solicitors of said parties, is in the words and figures following, to wit:

Stipulation.

United States circuit court, northern district of Illinois.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT AND CHARLOTTE PRICKETT, his wife. } In chancery.

It is hereby stipulated and agreed that the above-entitled suit may be set down for trial and hearing without notice, and that all depositions and testimony, on the part of either of the parties, which have been taken by the reporter and returned into court by the master to whom said cause was referred, may be read on the hearing without the same having been signed by the witnesses.
Dated Chicago, June 2nd, 1870.

BENNETT & ULLMAN,
Compl'ts' Sol'rs.
MILLER, VAN ARMAN & LEWIS.

(Endorsed:) Filed June 4, '70. W'm H. Bradley, cl'k.

28 The following stipulation, signed by the solicitors of said parties, is in the words and figures following, to wit:

Stipulation.

U. S. circuit court, northern district Illinois.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT ET AL.

It is stipulated that the complainant may examine witnesses on his part at Richmond, on May 6, '70, at the time and place stipulated for examination of witnesses for def't.

Dated April 25, 1870.

BENNETT & ULLMAN,
Compl'ts Sol'rs.
MILLER, VAN ARMAN & LEWIS,
Def'ts Sol'rs.

(Endorsed:) Filed June 30, 1870. W'm H. Bradley, cl'k.

The following stipulation, signed by the solicitors of said parties, is in the words and figures following, to wit:

Stipulation.

United States circuit court, nor. dis't of Illinois.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT ET AL.

29 It is hereby stipulated that the testimony stipulated to be taken at Richmond, Ill's, on the 6th May, be postponed until May 11, '70, and that the same shall then be taken.

MILLER, VAN ARMAN & LEWIS,
Def't's Attorneys.
BENNETT & ULLMAN,
Compl'ts Sol'rs.

(Endorsed:) Filed June 30, '70. W'm H. Bradley, cl'k.

On this day, to wit, the twenty-ninth day of July, A. D. 1870, said complainant, by his solicitors, filed in said court his objections to defendant's testimony in said cause in the words and figures following, to wit:

Statement of objections to def'ts testimony.

Complainant objected at the hearing to all testimony offered by defendant of representations made by any person or persons other than agents of the company, or made to any persons other than the defendants, or one of them; and to all testimony of statements made at public meetings at which the defendants were not present.

(Endorsed:) Filed July 29, 1870. W'm H. Bradley, cl'k.

30 On the hearing of said cause the following evidence and exhibits were read in evidence, to wit:

The following deposition of the defendant, Henry Prickett, taken before J. T. Moulton, master, in said court, on the 13th day of November, 1869, on the part of the def't, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of Prickett.

And HENRY PRICKETT was by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the said cause, and did hereupon, upon examination, depose, testify, and say:

1. Int. What is your name, age, occupation, and place of residence?

A. My name is Henry Prickett; my age, 61 years; occupation, a farmer; residence Town of Richmond, McHenry Co., Illinois.

2. Int. How long have you resided at said place?

A. Twenty years, July last.

3. Int. Are you the defendant in this suit?

A. I am.

4. Int. Do you own the real estate in the bill of complaint described? If so, how long have you owned the same, and by whom is it now occupied, and how long has it been so occupied?

31 A. I own the real estate described and have owned it for twenty-one years; it is now occupied by me, as the residence of myself and family, and has been so occupied by me as a residence and homestead for twenty years, and during that time I have worked the farm.

5. Int. Please state fully under what circumstances and how you came to execute the note and mortgage in said bill of complaint mentioned?

A. In the first place, a short time previous to the date of the same, a Mr. Conover and a Mr. George Parsons informed the citizens of the town of Richmond and the vicinity, that the said Fox River Valley Railroad, The first that I saw of Conover was in the village of Richmond. Conover and a number of citizens were together; they thought the property would be enhanced by having a railroad; they came to me and wanted me to subscribe; I told them I would not have anything to do with it, the first time that they came to me. Afterwards I did sign the subscription-list, and they represented to me that I should never have anything to pay; that they would pay the interest and that the dividends upon the road would pay the principal; that at the time the mortgage ran out, I should be ahead. A short time after that they came to my house, Mr. Parsons with the squire, to acknowledge the mortgage, and my wife held out about signing it a half an hour, I should think. They talked to her and told her it would be an everlasting benefit to her to sign it, and that the railroad would probably make thirty
32 per cent. and it would give her and her family six hundred dollars a year always. Mr. Sibley and this Conover were the two principal agents in getting subscriptions, and when they came to get the mortgage this Mr. Parsons came with the squire, in order to induce us farmers to subscribe to the subscription-list. They got William A. McConnel, a leading citizen to sign fifteen hundred dollars, with the agreement that they would take out a thousand and leave him only five hundred to pay, and likewise John Odell, if he would subscribe one thousand dollars they would hold him only for five hundred dollars, in order to get others to sign. They told me that there would never be anything to pay; that I have stated.

6. Int. Where did this Conover and Parsons reside?

A. I do not know; they came from Milwaukie, I think: Parsons was son-in-law to Conover. Conover was president; Parsons was secretary. They likewise told me that a railroad from Milwaukee to Richmond would enhance the value of property and produce would bring a better price in Milwaukee than in Chicago.

7. Int. For what purpose and object were Conover and Parsons at the town of Richmond at that time?

A. Their object and purpose was to get signers to the subscription-list for the stock of said company.

8. Int. What means did they take, if any, to induce persons to become subscribers to the capital stock?

33 A. They used every means they could.

9. Int. What means?

A. They represented that the road would be a good thing; that it would bring us a better price for our produce, enhance the value of our property, and that we should never have anything to pay for it—the dividends would pay the interest & they would pay the principal; they held meetings and got up a great excitement. The influence was principally exerted by some of our own citizens—William A. McConnel and Mr. Sibley, and some others in whom we had the utmost confidence. We thought that if they took stock we could take it too.

10. Int. How much stock did you subscribe for?

Two thousand dollars; at the time, though, I thought it was only two hundred.

12. Int. By your arrangement with the company at that time, in what manner were you to pay the subscription?

A. They were not to call upon me at all for any.

13. Int. You were to pay in some way; how was it?

A. To give a mortgage upon my farm; they said, likewise that if I did not draw the dividends that the dividends of the road would pay the mortgage; they were never going to call upon me for anything.

14. Int. How did you settle your subscription for two thousand dollars?

A. I settled it by giving a mortgage and note—a mortgage upon some land.

15. Int. Is that the mortgage here mentioned?

34 A. I think it is the mortgage here sought to be foreclosed.

16. Int. Where was it that you made the subscription?

A. In the village of Richmond, at a store there, Mr. Brown's store.

17. Int. Did you make your subscription in the stock subscription-book, or otherwise?

A. It was in the stock subscription-book, headed by William A. McConnel.

18. Int. Were there any other parties there who subscribed to the stock? If so, state whom, if you know.

A. I have reason to believe that there were many other parties, but not at that time; I saw no one sign when I did.

19. Int. At whose solicitation did you subscribe?

A. Mr. Conover, represented to be president of the company, and Mr. Sibley, a resident of Richmond, a citizen in whom we placed the utmost confidence. He said he had mortgaged his house and lot and it would be a good thing; induced me in every way to sign, and others, it is not necessary to mention their names. Dr. Stone and Dr. Bennett and some others.

20. Int. Did you attend any of the meetings held for the purpose of obtaining subscription?

A. No, sir.

21. Int. After the execution of the note and mortgage mentioned, what was done by the company so far as pertains to this road, if anything; whether they built it and how much work they did?

A. I believe they graded a part of the road, till they got their stock in and made a show that they were going to build the road and
35 have it finished in a year or two, but not much grading was done.

22. Int. Was the road ever built?

A. No, sir; the road was never built. They abandoned it.

23. Int. When did they abandon it?

A. I cannot state exactly; but as soon as they could get things settled up, I believe. There had been nothing done, I think, to the road after they got the mortgages all in.

24. Int. Are you acquainted with the complainant in this suit, Mr. Sawyer?

A. I have seen him several times. I am not personally acquainted with him. He has been to my house three or four times.

25. Int. Did he hold any relations to this railroad company?

A. Yes, sir. He was a director and a contractor of the road.

26. Int. Where does he reside?

A. Near Burlington, Wisconsin; not in the village, but near; within a mile.

27. Int. How far from you?

A. It must be fourteen or fifteen miles.

28. Int. When was he a director?

A. I am not positive as to time, but in the early part of the company's proceedings. I could not say, exactly, when it was.

29. Int. Would you have become a subscriber to the capital stock of this company except from the fact that William McConnell became a subscriber thereto, and the other parties you have named?

A. If they had not represented as they did, and if McConnel
36 and other leading citizens of the town had not subscribed, I certainly should not: but the representation was an inducement to make farmers subscribe, "See here, you put in six thousand dollars and you get six hundred for life. Is not that enough?"

30. Int. Please look at the paper now shown you, marked "Exhibit A." State if you have ever seen the same before; and if so, when and where, and under what circumstances you saw it.

A. I saw this paper and signed it, I think, about the 20th of September, 1857. It was given me the same time I gave the mortgage, I think about the 20th of September. It was given me at my residence.

31. Int. Have you ever received any other paper on account of your subscription?

A. No other paper; nothing but this certificate.

32. Int. Have you ever received any capital stock?

A. Never; no, sir. There has been no stock tendered me.

33. Int. Please look at the paper now shown you marked Exhibit "B." State when and where you saw the same, and under what circumstances; and if you became possessed of the same, state for what purpose it was given you.

A. This paper Mr. Parsons gave me. When he gave me the other certificate he gave me this, and that, (referring to "Exhibit A.")

Cross examination by C. W. Bennett, esq., counsel for complainant:

37 1. C. int. Where is the land situated which is described in the mortgage in this case; in what town and county?

A. It is situated in township number forty-six, (46,) section number thirty-three, (33,) in McHenry County, town of Richmond, which is township forty-six, (46.)

2. C. int. At the time you gave this mortgage, how much land did you hold in McHenry County?

A. I held three hundred & sixty acres, I believe.

3. C. int. Give a description of the land on which your dwelling-house and buildings were then situated.

A. The buildings are on the northwest quarter of the southeast quarter of section thirty-three, (33.)

4. C. int. The buildings were then on this parcel, and *and* still are on this parcel?

A. Yes, sir.

5. C. int. You have answered in your direct examination that at the time this mortgage was given, Mr. Conover and Mr. Parsons were severally president and secretary of the Fox River Valley Railroad Company. Do you know that of your own knowledge?

A. I did not answer that way. Mr. Conover was not there at the time I gave the mortgage.

6. C. int. Have you any knowledge as to whether or not Conover was president and Parsons secretary at any time; any personal knowledge?

A. No more than I have understood others to say—Parsons was either secretary or stock-agent, I think.

7. C. int. But you have no personal knowledge that he was either, except from information and hearsay?

A. No, sir; only from what I have heard.

8. C. int. You say in your direct examination they got William
38 A. McConnell, a leading citizen, to sign fifteen hundred dollars, with the agreement that they would take out a thousand and leave him only five hundred to pay. Do you know that personally, or is it simply hearsay?

A. That is what I understood from others. I saw his name on the list but I could not positively say for how much; I think it was for a thousand dollars, if my memory serves me right—it is twelve years ago—and I won't say positively.

9. C. int. You stated in your direct examination that they likewise agreed with John Woodell that if he would subscribe one thousand dollars they would let him off for five hundred dollars in order to get others to sign. Do you know that of your own knowledge, or is it simply hearsay?

A. That is as I understood it.

10. C. int. Do you know of your own knowledge that Mr. Sawyer, the plaintiff in this action, was ever a director of the Fox River Valley Railroad Company?

A. Not of my own knowledge; only what I have heard.

11. C. int. You say in your direct examination "the influence was principally exerted by some of our own citizens, William A. McConnel, Mr. Sibley, and some others in whom we had the utmost confidence." Do you mean by that that you were influenced by Mr. McConnel and Mr. Sibley to subscribe for this stock?

A. By Mr. Sibley, more particularly. He pictured it out so nice to me that he had a great influence on me to take stock.

39 12. C. int. Did you see Mr. Sibley on the day on which you subscribed for this stock?

A. No. It was some time before that; almost every day he was exerting himself in the matter.

13. C. int. Was Mr. Sibley then a resident of the town of Richmond, McHenry County?

A. Yes, sir. He resided in the same township that I did.

14. C. int. You say you saw Mr. McConnel's name upon the subscription books?

A. I think I did.

15. C. int. But you are unable to state what sum his name represented?

A. I could not say positively.

Redirect:

1. Int. Have you had any conversation with Mr. McConnel in relation to his subscription to this capital stock, at any time; and, if so, when and where, and what was said? Give the exact language, if you can, and if not, the substance of the conversation.

(Obj. by counsel for compl'nt.)

A. I saw Mr. McConnel yesterday, and asked him if he could help me in my case. He said he did not know whether he could or not; did not know what I wanted proven, he said. I told him we wanted to prove that he subscribed for more stock than he took. He said he did do that; three hundred dollars more, he said. That was about all that was said. He was in a hurry to go to a funeral of one of the citizens there, and I could not detain him any longer.

40 Exhibit A, referred to in said deposition of Henry Prickett is in the words and figures following, to wit:

Exhibit A, Sawyer vs. Prickett, Nov. 13, '69.—J. T. MOULTON.

Whereas Henry Prickett, obligor, has executed a note and mortgage in favor of the Fox River Valley Railroad Company, a body-corporate, created by the laws of the State of Wisconsin, bearing date on the first day of September, A. D. 1857, payable in ten years from the first day of September, A. D. 1857, for the sum of two thousand Dollars, with interest annually at the rate of eight per centum per annum, from and after the said first day of September, 1857.

And whereas said note and mortgage have been received in payment of twenty shares of the capital stock in said company:

Now, therefore, in consideration of the relinquishment and assignment, by the said obligor, to the said company, of so much of the dividends on said stock which he may become entitled to as shall be sufficient to pay the interest on said note, the said company agree not to demand said interest from him, and in case said note and mortgage shall be negotiated by said company, then said company agree to save him harmless from said interest.

And the said obligor hereby assigns to the said company so much of any dividend to which he may become entitled on said shares as shall be sufficient to pay off said interest, and agree to pay said principal sum when the same shall become due.

41 And it is further understood that this agreement of the said company to relinquish said interest, or to secure the said obligor harmless therefrom, shall not be a defense on his part against the payment of such interest, if said note and mortgage shall be in the hands of a third party as security or otherwise. Nevertheless, said company will at all times punctually pay and discharge the same.

In witness whereof the board of directors of said company have caused these presents to be signed by their duly constituted secretary, and the

said obligor has also set his hand and seal on this first day of September, A. D. 1857.

CHARLES H. MILLER, *Secretary.*
HENRY PRICKETT. [SEAL.]

(Endorsed:) Filed June 30th, '70. W'm H. Bradley, cl'k.

Exhibit B, referred to in said deposition of Henry Prickett, is in the words and figures following, to wit:

Exhibit B, Sawyer vs. Prickett, Nov. 13, '69.—J. T. MOULTON.

STOCK CERTIFICATE.

To the secretary of the Fox River Valley Railroad Company of Wisconsin:

SIR: This is to certify that Mr. Henry Prickett, of McHenry Co., Illinois, is entitled to a certificate of twenty share' of the capital stock of the Fox River Valley Railroad Company, he having executed
42 a mortgage for the same to this company, provided the property described in said mortgage is free from other incumbrances. Dated September 1st, 1857.

W'M G. PARSONS,
Stock Agent.

(Endorsed:) Filed June 30, '70. W'm H. Bradley, cl'k.

The following deposition of Alexander Gardner, taken before J. T. Moulton, master, in said court, on the part of the def't, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of Gardner.

And ALEXANDER GARDNER was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify and say:

1. Int. What is your name, age, occupation, and place of residence?

A. My name is Alexander Gardner. My place of residence McHenry Co., Illinois. I have been a farmer for the last twenty or twenty-five years.

2. Int. Are you acquainted with Henry Prickett, the defendant in this suit; and, if so, how long have you known him, and where does he reside?

A. I have known him since he came into the country—in the
43 neighborhood of twenty years. He lived on the farm where he now resides, in McHenry County, where he first settled when he came into the country.

3. Int. Are you acquainted with Mr. Conover and Mr. Parsons, mentioned by Mr. Prickett in his testimony?

A. Yes, sir; I am some acquainted with them.

4. Int. Where did you first see them?

A. I think I first saw them at my house; they came to my house.

5. Int. When was that and for what purpose did they come?

A. That was about ten or eleven years ago, the time they were

taking those mortgages and stocks; and they came to induce me to take stock in this road, the same road that Mr. Prickett took stock in, called the Milwaukee branch of the *of the* Fox River Valley Railroad.

6. Int. Were they at this time acting as agents of the Fox River Valley Railroad?

A. Yes, sir.

7. Int. What was their proposition in the county and neighborhood? What was the object of their visit?

A. It was to induce the citizens to take stock in the road to enable them to get funds to build the road; that was what they said.

8. Int. What means, if any, and what course did they adopt to induce the citizens and residents to become stockholders?

A. They done it in this manner. They set forth the great benefits
44 and facilities the community would derive from the road being built; it would open a connection with the Milwaukee market; that the Milwaukee market was better than Chicago; that Milwaukee wheat sold at an advanced price above the Chicago market; that opening this road to Milwaukee would cause farmers to reap the benefit of five cents a bushel upon their wheat. They likewise set forth that it was going to be a good investment for a farmer to make; that if they would take stock in the road they could take it by giving a mortgage running ten years at eight per cent. interest, payable annually, and the company was willing to pay the interest, the person giving a mortgage would not be called upon for the interest; then they said that if the parties giving the mortgage should let the dividends of the road remain in the company's hands, at the expiration or before, the dividends would pay off the stock and *and* perhaps more, and they would have the stock clear in ten years. They held out these inducements.

9. Int. Did they create any excitement or interest among the farmers in the vicinity regarding this road? If so, what means did they take to accomplish their purpose?

A. They held meetings, made speeches, and represented the great benefit that it would be to the farming community, raising the value of real estate, giving them a better market in Milwaukee than they had
in Chicago, and that it would bring them in quite a revenue from
45 the dividends. They represented that it would be a good paying road.

10. Int. Did you become a stockholder for that stock?

A. I subscribed under certain conditions. I did not consider it subscribing. It was represented to me like this: that where a party agreed to give a mortgage running ten years there was no contract until the mortgages were executed and signed. This man Sibley was a man that the citizens had confidence in. He came to me and I told him I was ignorant in regard to railroad matters. He said that he had mortgaged his house and lot in Richmond for as much as they would take; it was worth one thousand dollars, and they took it for five hundred. He represented that if I would take the stock it would be good paying property to me, raise the value of my farm, and give me a better market. I proposed taking three hundred dollars worth; said he, "You had better take five hundred, that would make you a voter and give you a voice." He staid there a long while with me, two or three hours, eat dinner, and while we were at the dinner-table I told him I might take five hundred dollars stock in the road, and, said I, Mr. Sibley, before I give you a mortgage, I want to inform myself more upon this matter. A little previous to this he handed me a small book, which I supposed to be nothing more than a memorandum book, and I wrote

my name on that with a pencil for the amount of five hundred dollars. He wrote above my name; I supposed it was merely a memorandum.

46 When they had the meeting at Richmond they invited me to come up there. I made up my mind I would not attend the meeting. I took some pains to inform myself, and made up my mind not to take any stock, as the whole thing, I thought, was a swindle. A short time afterwards this man Parsons came around to my place with Dr. Bennett, who was a justice of the peace, and Dr. Stone. I think, on reflection, that Squire Bennett did not come at that time, but Dr. Stone and Parsons did. Parsons demanded a mortgage. I told him I had not agreed to take any mortgage stock; that I did propose taking stock to the amount of five hundred dollars, providing everything was all right. "Why," said he, "you have got your name upon the book here for five hundred dollars, and if you refuse to give a mortgage we will collect the cash subscription of you. The road will be built this year, and if you do not give a mortgage you will have to pay cash subscription within a year." I said there was no contract presented to me; "I knew nothing about any contract." Said he, "we have got your name to a cash subscription contract." Said I, "If my name is attached to a cash-subscription contract I did not know it." He insisted on my giving a mortgage, and I told him I did not make a contract to give any mortgage. He left at that time, and a short time afterwards Mr. Conover came, and he and Dr. Stone and Squire Bennett, justice of the peace, demanded a

47 mortgage. I told them I had not agreed to give any mortgage. They said they had got my name upon the cash subscription list, and I might hand over if I would not give a mortgage. Upon that I told them if they got one hundred dollars out of me within a year they would know it. They said they had got my name to the cash-subscription contract, and were going to put me through upon it. I went and looked up the book and told them if they had got my name upon the book for a cash-subscription contract I wanted to know it. Mr. Brown produced the book, and I found that upon turning over several leaves I came to my name; that was the way they claimed that my name was attached to that cash-subscription contract. I had supposed that was a memorandum of Mr. Sibley's. Afterwards they brought suit against me—sued me on a cash-subscription contract, and in order to make their suit stick, as they found they had commenced wrong, they took and erased two words and inserted others. Erased the words "by mortgage," and gets this man Parsons to come into court and say that I had changed that to a cash-subscription contract. There was no such change ever made as they testified to.

11. Int. Are you acquainted with W'm E. McConnel?

A. Yes, sir.

12. Int. Where does he live?

A. In the town of Richmond.

13. Int. What was his position and standing in the community there at the time of giving these mortgages?

48 A. He was considered one of the most influential men in the town, and also in the whole county.

14. Int. Was he a subscriber?

A. He was the first subscriber on the list.

15. Int. Do you know upon what arrangement with the company he subscribed; and, if so, what arrangement? And how did you become possessed of that information?

A. I talked with Mr. McConnel himself in regard to this subscription. I asked him how much stock he had taken in the road. I think he

said he had taken five hundred dollars. I said "Does not your name stand upon the books for a thousand or fifteen hundred dollars?" or double the amount he claimed he had taken in the road. I said, "Why does your name stand there upon the subscription-list for that amount when you have only taken five hundred dollars?" He answered by saying that he put that amount there at the company's request. I asked him, then, what was the object of the company's putting that amount there when he had only taken five hundred dollars. He said he did not know. He went away, and did not wish to talk any more about it.

16. Int. Do you know whether he ever settled his subscription; and, if he did, how did he settle it?

A. I do not know, only from report. I heard that he had settled it in this way: That by his subscribing then fifteen hundred dollars he induced his neighbors to take stock in the road. John Ardes took stock to the amount of fifteen hundred dollars through his influence.

17. Int. How far was this road ever completed, and to what extent?

A. I do not think there was ever a rod completed.

18. Int. How much work was done upon it?

A. I never saw anything except a little grading done; I was not through the whole route; but at this end of the route there appeared to be very little done.

19. Int. What representations, if any, were made by the officers at the time they took these subscriptions?

A. They represented that the road would be built within a year; that, at that time, there was some twelve miles of the road, I think, graded from Milwaukee out, and that within a short time there would be twelve miles completed, and that there would be a dividend coming from that part of the road; if we did not want to take the dividend it would be applied upon our subscriptions.

20. Int. Were these representations made generally throughout the country?

A. I think they were, as far as my knowledge extends to all, in order to induce people to take stock.

21. Int. Are you acquainted with Ephraim , the complainant in suit?

A. No, sir, I am not.

22. Int. Do you know whether he had any connection with this company; and, if so, what was it?

A. I do not know, only from information; I heard he had, but do not personally know it; I heard he was one of the directors and a contractor.

23. Int. Are you acquainted with Mr. Woodell; and, if so, how long have you known him?

A. I am acquainted with him, and have known him in the neighborhood of fourteen or fifteen years; somewhere along there.

24. Int. Did you, at any time, have a conversation with him pertaining to subscriptions for the capital stock of this company? If so, when, and under what circumstances, and what was said?

(Objected to by C. W. Bennett, esq., counsel for compl't.)

A. I had a conversation with him in regard to this matter; it must have been nine or ten (10) years ago; after they had taken these subscriptions, notes, and mortgages.

25. Int. State what was said.

A. They were trying to get me to take stock in the same road or company, and trying to compel me to take stock. About this time I had

learned that it was all a swindle and a fraud, and concluded not to take any stock. I had a conversation with Mr. Woodell in relation to stock which he had taken in the road, and how he came to take the stock. He stated, I think, that Mr. Conover was one of the men—I do not recollect who the others were—told him if he would subscribe liberally, if he would put his name down for a thousand dollars, that his neighbor,
Peter Whitney, had agreed to take as much as he would; and he
51 told me that he had made an agreement with them to put his name down for a thousand dollars, and it was agreed that he should (not) pay only five hundred dollars; I think he told me that they had settled with him by his taking five hundred dollars worth of stock.

Cross-examination by C. W. Bennett, esq., counsel for compl'n't:

1. C. int. Who was present at this conversation, Mr. Gardner?

A. I do not recollect whether there was any person present or not; there might have been, but I cannot say who.

2. C. int. Where did it take place?

A. In the town of Richmond.

3. C. int. At what place in the town of Richmond?

A. My memory does not serve me whether it was out of doors or in a store; it might have been in a store, and it might have been in the street.

4. C. int. In what year was this?

A. I could not be positive as to the date, but as near as my memory serves me it was the time they were taking stock, and they were trying to get me in; it was in the neighborhood of nine years ago, nine or ten.

5. C. int. Where does Mr. Woodell now live?

A. He now lives in Iowa; he lived in Richmond at that time.

6. C. int. When did he remove to Iowa?

52 A. I think it was a year ago; it might have been last spring.

7. C. int. Do you know at what place in Iowa he resides now?

A. I do not.

8. C. int. Do you know, of your own knowledge, whether Mr. Sawyer was ever a director of the Fox River Valley Railroad Company?

A. No, sir; I heard he was.

(Counsel and parties on each side consent that any objections may be made to the testimony at the hearing, the same as on the interrogatories before the matter.

(Endorsed:) Filed June 30, '70. W'm H. Bradley, cl'k.

53 *Dep. of Andrews.*

The following deposition of George Andrews, taken before J. T. Moulton, master in said court, on the part of the def't, was filed in said court on the 30th day of June, 1870, in the words and figures following, to wit:

Master's report of evidence for respondent.

In the circuit court of the United States of America within and for the northern district of Illinois.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT. } In chancery.

Pursuant to an order made by the said court in the above-entitled cause on the first day of November, A. D. 1869, wherein and whereby

it was referred to J. Tilden Moulton, a master in chancery of the said court, to take the proofs in the said cause, and report the same to the court. I, the said master, do hereby report that, on the thirteenth day of October, A. D. 1869, I was attended by the said parties, and by their respective , and by GEORGE ANDREWS, a witness produced
54 on behalf of the respondent, and said Andrews was by me first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and he did, thereupon, upon examination, depose, testify, and say—

1. Int. What is your name, age, occupation, and place of residence?

A. My name is George Andrews. My age is 54. I am a farmer, and live in McHenry County, Illinois.

2. Int. Were you a subscriber to the capital stock of the Fox River Valley Railroad Company; and, if so, for how much were you such subscriber, and under what circumstances did you so subscribe?

A. I do not know whether I ever subscribed or not. I gave a mortgage for ten shares. I do not recollect that I put my name down myself. I think they did that for me.

3. Int. State all the circumstances connected with the matter.

A. Why I was induced to do it was because Mr. McConnel and Mr. Sibley were men that we placed great confidence in. McConnel was a pretty close kind of a man. We considered him a leading citizen and about right, and that he would not advise us to do anything wrong. His name was on the books for a large amount, and it was in everybody's mouth to have the competing line. Our grain would bring a better price, and if we would mortgage our property we never would have to pay it, and they would see me free from all harm. I did
55 not like to give a mortgage. I wanted something to show for it if I did. He had a book with blanks in it, and said that was the form in which they drew up all the rest of them. This was the stock-agent, at the time he came round; that we never would be called upon for principal or interest; that they were going to build the road right away, and that it would be paying right along. They represented to my wife that if I should be taken away, or anything happen to me, it would be the means of helping her. It was through McConnel and Sibley that I gave the mortgage. My wife did not want to sign it. I had every confidence in Sibley, and thought he would not advise me to do anything that was wrong. That is why I took stock in it. It was in every one's mouth—there was such an excitement got up. Our wheat was going to fetch more in having the road, which was going to be built right away, as Milwaukee wheat was worth a great deal more than wheat taken to Chicago. It would be a great benefit to the country and to us all. I did not want to give the mortgage at the time the stock-agent came for it. He said that my name was upon the books, & he said it would be just as good as a mortgage.

4. Int. What was the station and standing in the community, at this time, for business integrity, of William A. McConnel?

A. He was considered one of our leading men. We all looked up to him. He was the supervisor and a good financier. We all respected
56 him, and thought whatever he said was right; and they were all willing to do as he said, and fall in with what he said, and so with Sibley; every one had every confidence in him, that he would not do anything that was wrong, and that he would not lead the subscribers into any trouble.

5. Int. Was McConnel & Sibley especially active in endeavoring to procure subscriptions to the capital stock, or otherwise?

A. I think they were very active—Sibley in particular.

6. Int. What was said, if anything, at this time in relation to the completion of the road?

A. That they had commenced on the road, and were going to complete it right away, and have cars running upon it, so that it could be bringing in something.

7. Int. How long did they continue the prosecution of the work on the road?

I guess until they got all the mortgages they could get.

8. Int. How many months do you think that they worked upon the road?

A. I would not like to say.

9. Int. How many do you think? Did they work a year, or two years?

A. They did not work a year. I could not say how long they worked.

10. Int. Since that time have any steps been taken by this company towards the completion of the road, to your knowledge? and if so, what steps?

57 They did a little grading. Mr. Brown was one of the directors, and he came to me and wanted me take up one of my notes, so as to make it payable at a shorter time, and they would allow me 25 cents upon every dollar that I would turn in. They wanted me to up notes & give notes upon shorter time, and allow me twenty-five cents on the dollar, or that I might turn in wheat or anything at its value in payment of the notes at seventy-five cents on the dollar.

11. Int. Since this grading was done, has anything further been done towards the completing of the road?

A. I do not think there has. There has not, to my knowledge.

12. Int. Were these representations made to you made generally to the community there?

Yes, sir; it was in the mouth of every one, almost. It was general conversation, and there was quite an excitement about it.

13. Int. How was the excitement created, and by whom?

A. By many persons—Dr. Stone and others. They held meetings, but I did not attend any of them.

14. Int. At the time this subscription list was presented to you, was William A. MacConnel a subscriber? Did his name appear there?

A. I believe his name headed the list.

14. Int. For how much?

58 A. I could not say for how much for certain, but my impression is that it was fifteen hundred dollars.

15. Int. Did Mr. Sibley's name appear there as a subscriber?

A. I did not see it; it was represented to me that it was upon the book.

16. Int. Did Mr. Woodell's?

A. I do not remember about it.

(Endorsed:) Filed June 30, '70. W'm H. Bradley, cl'k.

Dep. of Imeson.

The following deposition of Jonathan Imeson, taken before J. T. Moulton, master in said court, on the part of the def't, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

And JONATHAN IMESON was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

1. Int. What is your name, age, occupation, and place of residence?

A. My name is Jonathan Imeson; my age is sixty-one years; I reside in McHenry County, Ill's.

2. Int. Did you subscribe to the capital stock of the Fox River Valley Railroad Company? And, if so, please state all the circum-
59 stances attending the same, and how you became such subscriber.

A. In the first place, we had a meeting at Richmond; some men from Milwaukee were there; there was quite an excitement then in town; it was all railroad. They got up in the hall and kept the meeting up 'most all the afternoon. It was stated there that they had come to get some help from us to run a branch from Milwaukee to Richmond. They did not want any help to build the road down to their State-line. They wanted help to build the road from the State-line to Richmond. That was all they asked us to do. They had got money enough in their possession to build the road from Milwaukee to the State-line. They were to put part of the rolling-stock on. They had got nine or ten miles that would be soon ready for operation, and when it was they would be earning something that would pay expenses right away, and they wanted to get mortgages out there, and they wanted to get them in this way: they wanted us to give mortgages in a shape that they could borrow money on them. They did not want to take them away and sell them, but to hold them to borrow money on—and the road to be in running order. It would be finished in from one to two years; two years at farthest. After the meeting—a few days after the meeting—this Mr. Sibley came along, and another director from Rochester; I have for-
gotten his name. He was well acquainted with me, and said he:
60 "I want you to take some stock in this road." Said I, "I want nothing to do with it; I can neither read nor write very well, and I want nothing to do with it." "But," said he, "you do not know what is best for you. I have got a house and lot in Richmond, and I have put it in for what they will take it for; and," said he "it is a good deal more benefit to you than to me, for you are a farmer, and," he said, "the Milwaukee market is a great deal better than Chicago, and your wheat will bring for you five cents more a bushel in Milwaukee than it will at Chicago; and," said he, "you must take some stock anyhow." I told him I would not take any stock. He stopped and got dinner, and before he went away I partly promised to take some stock; and he went away with a partial promise from me that I would take some stock; and in a week or two Mr. Bennett and Mr. Parsons came around. Mr. Bennett was the 'squire, and he went on and explained the thing to me, and got me to thinking that it was going to be a grand thing and a money-making thing. I finally agreed to take one thousand dollars. Mr. Bennett told me, said he, "You will have nothing to pay." Said he, "You sign for this, and by the time, in seven or eight years, it will be paid up, the whole thing, and the company will pay the interest right along, and you will have nothing to pay, and by signing this you will be making money the whole time." I told him
61 I did not understand anything about it.

3. Int. Were these same representations made to the other farmers in the community, as far as your knowledge extends?

A. Yes, sir; I believe, the whole of them.

4. Int. Was there any excitement created on account of this road in that neighborhood?

A. Yes, sir; there was considerable.

5. Int. Are you acquainted with Mr. MacConnel?

A. Yes, sir; I am.

6. Int. How long have you known him?

A I have known him over twenty years.

7. Int. What is his standing in that community?

A. He is a leading man there, and they think that whatever he does is perfectly right. He is a very close-calculating man, and calculates to *to* carry everything about straight.

8. Int. Was he a subscriber to the capital stock, to your knowledge, of the Fox River Valley R. R.?

A. I know nothing only what Mr. Sibley told me.

9. Int. What did he say in regard to Mr. McConnel's subscription?

A. Said he, "He is a heavy subscriber."

10. Int. What did he say he had done?

A. He said he put his house and lot in for all they would take it for.

11. Int. Are you acquainted with Mr. Sawyer, the complainant in this suit?

A. Not personally. I know him when I meet him upon the road.

12. Int. Where does he reside?

A. About two miles south of Burlington.

62 13. Int. How near the line of this road?

A. I guess it is a mile and a half.

14. Int. Do you know whether he held any relation to this company?

A. He was reported to be a director and contractor.

15. Int. Was it generally understood there in the community that he was a director?

A. It was.

16. Int. What time was this?

A. It was in the forepart of the season.

17. Int. What was done by the company towards the completion of this road after the execution of these mortgages?

A. Little, if anything, was done of work for a while, but I think as soon as they got the money they used it up.

18. Int. Since that time has anything been done towards completion of the road; and, if so, what?

A. Not the first thing has been done.

(Endorsed:) Filed June 30th, 1870. W'm H. Bradley, cl'k.

Dep. of McKesson.

The following deposition of J. C. McKesson, taken before J. T. Moulton, master in said court, on the part of the defendant, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

63 And J. C. McKesson was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

Direct ex'm'n of J. C. McKesson:

1. Int. What is your name, age, residence, and occupation?

A. My name is J. C. McKesson. I am 54 years of age; reside in the town of Randall, Kenosha County, Wisconsin, and am a farmer by occupation.

2. Int. Are you acquainted with an organization known as the Fox River Valley Railroad Company?

A. Yes, sir.

3. Int. Did you have, at any time, any connection with it; and, if so, what?

A. The first connection I had with the road was with a set of men to obtain a charter. The next I was appointed a commissioner for the purpose of organizing a company under the charter.

4. Int. Was the organization ever effected to your knowledge; and if so, how and in what manner?

A. In the spring of 1853 there was an organization proposed to be effected at the village of Waukesha.

(Objection by counsel for compl't.)

We met at Waukesha, I think, the last of May, 1853, and intended to organize a company, and according to our charter we elected one of those commissioners by having a majority of the commissioners. The most of the commissioners came there through the influence of
64 Mr. Bacon, of Waukesha, not knowing what he wanted of them; and as they found out what he wanted them there for, some left, and a minority went on and organized. There was a certain amount of three or five per cent. taken, to be paid in there on stock, or that amount was subscribed, but there was no five per cent. paid in.

5. Int. Was there any sum paid in?

A. Not that I know of.

6. Int. Was an organization effected at this time?

A. They claimed to hold an organization at that time. That was all the organization they had.

7. Int. Were there any officers elected?

A. Not at that time.

8. Int. At any subsequent time was there any elected?

A. Yes, sir; they elected directors of the road.

9. Int. Were you at any time an officer; and, if so, what office did you hold?

A. I held the office of director.

10. Int. At what time were you elected to that office?

A. I was elected in 1853.

11. Int. How long did you serve?

A. Until the third of January, and was re-elected again and served another year, and I do not know but two years afterwards.

12. Int. At the time of this organization was there a majority of the commissioners named in the charter present?

A. I will give you the truth of this matter. There was a division of the commissioners named in the charter, and Barston held a majority of the commissioners. Mr. Bacon and Mr. Belden thought
65 they would influence those commissioners to come to Waukesha, and when they found out what was wanted of them they left, and the' our party were in a minority after that. Barston and some others of them went on and organized with a majority; and they had a majority, and these two organizations existed, I think, until 1856; and I understood, in 1856, that one purchased the right of the road of the other organization, but I know nothing about it. The other organization went out of existence—the Barston organization—but until that time they claimed that they were the company.

13. Int. At the time of this organization state, if you know, how much of the capital-stock had been subscribed for.

A. I could not state what the amount was at the time that we organ-

ized. I recollect the required amount was subscribed by the commissioners, but there was no money paid in.

14. Int. Did you become a subscriber to the capital-stock?

A. I did.

15. Int. When?

A. At the time of its organization.

16. Int. Did you give any mortgage in payment?

A. No, sir.

17. Int. At any time.

A. No, sir.

18. Int. How much of this road has been constructed?

A. Well, the grading has been done at different points along the road, I suppose, for some thirty-odd miles. I do not know whether there is any great number of miles completed at any point.

66 19. Int. How much, if any, has been done in this State?

A. None.

(Counsel for the defendant proposes to introduce a certified copy of the act of incorporation of this company, marked by the master Exhibit "C.")

20. Int. Are you acquainted with the plaintiff in this suit; and, if so, how long have you known him?

A. I am acquainted with Mr. Sawyer. I do not know whether he is the plaintiff or not.

21. Int. Had he, to your knowledge, any relation to this company; and, if so, when, and what relation?

A. He has been a director of the road.

22. Int. When was he a director?

A. In 1855, I think.

23. Int. How long was he a director?

A. I could not say. I think he was a director in 1856, too.

24. Int. How do you know that he was a director?

A. I think I have met with him as a director.

Cross-examination by C. W. Bennett, esq.:

1. Int. How much did you subscribe?

A. Well, I subscribed five hundred dollars. They went and altered my subscription, and made it fifteen hundred dollars. I told them I did not care what the amount was. I set down myself five hundred dollars. I was a little careful for I thought it might have to be paid.

2. Int. And the reason you did not pay it was because they never called for it?

A. No, they never called for it.

67 3. Int. There was no agreement, at the time you subscribed, that you need not pay, was there?

A. There was talk at the time that we need not pay the five per cent.

4. Int. Was there any agreement that you should not pay the subscription?

A. There was no agreement, Mr. Bennett, only this: it was talked over there that we thought we could not hold that organization; we made a show to scare off the other fellows. We thought they would not organize.

5. Int. Were you in the board of directors in 1856, or after 1856?

A. I think it was in 1856—in the winter of 1856.

6. Int. Were you in the board at the time these two rival organizations were fixed up?

A. Yes, sir.

7. Int. After the Barston organization was out of the way did you ever renew your subscription?

No, sir; I got a quo warranto from the supreme court, and wound my matter up with them at that time. I sent Mr. Norton to Madison, and settled the matter up. They fixed the matter with him.

8. Int. When did you settle up your matters with them?

A. I think it was in February or March, 1856; it might have been in 1857. It is a good while ago, and I cannot tell the date. I can tell partly, too; it must have been in 1857. I think it was in 1857, in January or February. The litigation commenced the year before.

9. Int. The settlement you speak of wound up all litigation, and your connection with the company?

68 A. Yes, sir; I have had nothing to do with the company since that time.

10. Int. Who was president of the company, in 1856?

A. Mr. Belden.

11. Int. And in 1857?

A. I think Mr. Belden was president at the time I settled up with them. I cannot say, positively.

12. C. int. Have you any idea what time in 1857 it was?

A. It was in the winter either of 1856 or 1857. Why I know is that Mr Norton and wife were there, and I particularly remember it.

13. C. int. Can you tell how long it was after you first subscribed, before you finally wound up your connection with them, and settled up with them?

A. I think I am not mistaken. It was either in 1856 or 1857 that we settled up. I think the charter was obtained in 1855, in April or the latter part of March, and that fall or the next winter, and the next spring, we got all the stock we could on the road. I think it was the next fall, in 1856 & '7.

The signatures of the several witnesses to their respective depositions is waived, as per stipulation on file.

[SEAL.] J. T. MOULTON,

Master in Chancery, U. S. Cir. Court, N. Dist. of Illinois.

[Int-rev. sta'p.]

(Endorsed:) Filed June 30th, '70. W'm H. Bradley, cl'k.

69 The following stipulation, signed by the parties by their solicitors, is in the words and figures following, to wit:

Stipulation.

United States circuit court.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT ET *ax.*

It is hereby stipulated that "Exhibit C" of defendant, being a certified copy of the charter of the "Fox River Valley Railroad Company," may be omitted from the record to be returned to the Supreme Court, at Washington, and that the said charter, as printed in the published

volume of the laws of Wisconsin, may be used instead of said copy on the hearing of the appeal herein.

BENNETT & ULLMAN
Compl't's Sol'rs.
MILLER, VAN ARMAN, & LEWIS,
Def'ts' Sol'rs.

The following deposition of the complainant, Ephraim S. Sawyer, taken before J. T. Moulton, master in said court, on the part of defendants, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of Sawyer.

And on the twenty-fourth day of November, EPHRAIM S. SAWYER was, by me, duly cautioned and sworn to testify the truth, the
70 whole truth, and nothing but the truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

1. Int. You are the plaintiff in this suit?

A. Yes, sir.

2. Int. At what time did you become the owner of the note and mortgage sought to be foreclosed in this suit?

A. I do not know that I can tell you; there is a date on the paper that will tell, and I cannot remember.

3. Int. Look at the paper.

A. The sixth of March, 1861, as I read this. (Looking at paper handed him.)

4. Int. From whom did you obtain it?

A. I do not know how to answer the question better than to explain in whose hands it was, and how it came there.

5. Int. You can answer the question in your own way.

A. Barnes was the agent.

6. Int. You got it from the company, did you not? Barnes was the agent of the company, wasn't he?

A. Not the Fox River Valley Railroad Company. There was a number of us on the same paper to the Fox River Valley Railroad Company for some seven thousand dollars, and we got Barnes to go and see if we could get anything from the company to pay us up, and he went and got several mortgages, and this among the number, I think in June, 1858. They had been running some time, and were divided out, and I took this to pay for what I had advanced. I had paid part, and
71 paid more to make up what was still due on it.

7. Int. Then your explanation is that this mortgage was given you in payment to you, by this railroad company, for payments made by you on its account?

A. On notes that I signed for the company, given to Barnes, and then assigned from Barnes to me. Barnes was an agent for five or six of us that were on those papers. They were assigned to him to secure us at that time.

8. Int. Did you at any time have any connection with this company; and, if so, what?

A. I have been a stockholder.

9. Int. Have you been a director; and, if so, when?

A. I have been a director. I was elected, I think, in the fall of the year 1854.

10. Int. How long did you serve?

A. I think a little over two years. I think I was a director in the years 1854, 1855, & 1856, but resigned, soon after elected, in 1856.

11. Int. How far from the line of this road do you live?

A. Perhaps a trifle more than two miles from the surveyed line?

12. Int. Were you at any time interested or zealous in procuring stock subscriptions for this company?

A. I volunteered, and went one day to help get stock.

13. Int. Were you acquainted with the manner in which the company and its agents procured stock along the line of the road?

A. Well, I was not with them only one day.

14. Int. Were you acquainted with the manner in which they
72 did it; and do you know whether they took cash subscriptions and farm mortgages?

A. They took farm mortgages and cash subscriptions; that is they took subscriptions for the stock, and then, afterwards, took farm mortgages.

15. Int. Were not representations made by the company, at this time, to your knowledge as a director, to persons solicited to take stock or subscribe for stock, as to the ability of the company to pay the interest upon the indebtedness, and, in the end, from the dividends pay the indebtedness represented by these farm mortgages?

A. There was an understanding that they would pay the interest as long as they kept the mortgages, but if transferred it would be no defense for the mortgagor after they passed into a third person's hands.

16. Int. Was it not represented by the company to the subscribers for stock, that the company would pay the interest upon the indebtedness secured by the farm mortgages, and from the dividends ultimately pay the principal?

A. I do not know whether the company so represented. I have heard other men say so, but do not know that I ever heard any agents of the company.

17. Int. Did you as agent of the company, at any time, take any subscriptions for the capital stock?

A. I went one day with some men. I think they took a few subscriptions that day. I never went but one day, and then I was sick, or else I should not have gone; that is, I was not able to work.

73 17. Int. How happened it that you became security for the company?

A. The directors got a little strapped, and they came to us, and they claimed that they were going to have money, and I signed, with some of the other directors, at several times.

18. Int. Did you ever have to pay these notes?

A. I did; that is true as you live.

19. Int. To what amount?

A. They strapped me—just about ten thousand dollars.

20. Int. Were these notes signed by you at the time you were a director?

A. Yes; I signed them, as an individual, when I was director.

21. Int. How much work was done upon this road?

A. Well, sir; I am not able to tell you. I know it is graded a good deal of the way. There are some places where there *is* spots that are not graded.

22. Int. When did they finally stop work upon it?

A. I should think, but may be mistaken, it was in the summer of the year 1858. I may be mistaken in the date.

23. Int. Has any work been done since then?

A. I do not know that there has. Qualey has worked since that, I think, but his figures will show. It is hard for me to remember anything in dates.

24. Int. Were you a director in the company at the time you received this note & mortgage?

. No, sir; I had not been after the fall and winter of 1856.

74 I was not a director at the time it was taken, nor for several months before. I had been kind of out one side, and proposed to keep away.

Cross-ex'm'n.:

1. C. int. Were you a subscriber to the stock of this company?

A. I was.

2. C. int. For how much?

A. I was a subscriber to the stock of the company, in our State, for four hundred dollars, cash, and five thousand dollars, mortgage-stock, besides what they strapped me on the note.

3. C. int. Did you pay this subscription?

A. I did. I paid every cent of the cash-stock, and the five-thousand-dollar mortgage I reduced to fifteen hundred of the cash-subscription, and paid that, so that I paid nineteen hundred dollars.

Further examination of Ephraim S. Sawyer, on the part of the complainant, February 10th, 1870.

1. Q. You say you gave a five-thousand-dollar mortgage to this company, and you subsequently reduced it to fifteen hundred dollars?

A. Yes, sir, I did.

2. Q. When did you reduce it to fifteen hundred dollars?

A. I could not tell you exactly.

75 3. Q. About what time?

A. I guess within the first two years.

4. Q. Of the mortgage?

A. Yes, sir.

5. Q. About what year was it?

A. It was in 1854 that I gave it. I should think I got it down about 1856, as near as I can recollect. I do not recollect the exact time.

6. Q. Were you a director of the company at the time?

A. I was.

7. Q. Do you know anything about a note that was given to D. J. Vaughn for five hundred dollars?

A. I do not know whether I know; there *was* a good many notes. I will be blamed if I can keep the run of them.

8. Q. Have you paid out any money on account of this company since the 10th day of June, 1858?

A. Yes, sir.

9. Q. Who have you paid any money to; and on what account?

A. These notes were not all paid at that time.

10. Q. What notes?

A. I think a note—you say 1858?

11. Q. Since the 10th of June, 1858?

A. I do not remember which was paid first. I know the one that was paid last was a note to a man by the name of White; and that was not paid till, I think, in the spring of 1861.

12. Q. How much was it?

76 A. Fifteen hundred dollars.

13. Q. Did you pay any portion?

A. Yes, sir.

14. Q. How much?

A. I cannot tell you. I paid my share; I cannot tell how much.

15. Q. Who was on that note?

A. Mr. Forbes, Mr. Vaughn, myself, and whether more on that note or not—there *was* some of the notes four or five *was* on, and whether more or not I do not recollect.

16. Q. *Was* you on that note?

A. I was.

17. Q. How much money did you pay on account of that note?

A. I do not recollect. I think I had to pay pretty nearly one-third.

18. Q. State how much you paid.

A. I could not state.

19. Q. Three hundred dollars?

A. Yes, sir; more than that.

20. Q. Four hundred dollars?

A. I should think I did.

21. Q. When did you pay it?

A. I do not know that I can tell the date. I think it was in 1861.

22. Q. Is that about the amount you paid—four hundred dollars?

A. It may be; maybe I paid more.

23. Q. Maybe you didn't pay as much?

A. I guess I paid as much. I do not remember how many there were upon that note.

77 24. Q. I will ask you how much you paid on that note, and who did you pay it to?

A. I paid it to C. P. Barnes. The note was left in the bank for collection.

25. Q. You paid it to C. P. Barnes, did you?

A. Yes, sir; my share of all these.

26. Q. Whatever you paid, you paid to C. P. Barnes?

A. Yes, sir.

27. Q. How much did you pay to him?

A. I cannot recollect.

28. Q. Did you take a receipt for it?

A. I presume not.

29. Q. Can't you recall some circumstance that will enable you to say when you paid on that note and the amount you paid?

A. I do not think of anything that will point me to the time. I know the note ran along three or four years. The time it was paid I do not recollect.

30. Q. Will you swear that you paid altogether more than four hundred dollars on account of that note?

A. I think I did.

31. Q. Are you positive that you did?

A. I think there was but three on the note of fifteen hundred dollars. Mr. Norton was on. I paid his share—one hundred and twenty-odd dollars—and never got my pay. I had to do it to get rid of the note.

32. Q. Did you pay more than four hundred dollars on account of that note?

A. I guess it would be safe to say that I paid five hundred dollars.

33. Q. Did you pay anything on any other note?

78 A. I did.

34. Q. Which one?

A. One to David Vaughn.

35. Q. Take the one to David Vaughn. How much did you pay on that note?

A. I paid whatever was my share.

36. Q. How much did you pay C. P. Barnes, and when did you pay it, on account of the notes that Vaughn held?

A. I do not know how much it was. I paid whatever my share was. I cannot tell you how much.

37. Q. You cannot tell when you paid it?

A. No, sir. I do not think I can tell the date.

38. Q. You do not know how much you paid on it?

A. I know I paid my share.

39. Q. Do you know who was on these notes?

A. I know that Mr. Forbes—I do not know but Mr. Forbes was on, and do not know as he was. He was not on but few of them.

40. Q. How much did you pay on the two Vaughn notes; one five hundred, and the other seven hundred dollars—D. J. Vaughn?

A. That is twelve hundred, isn't it?

41. Q. Yes, sir. Two notes—one five, and the other seven hundred—same man.

A. I paid my share. I do not know what it was—whatever Barnes made; he always made the division.

42. Q. How much did you pay?

A. If I knew who was on the notes I could figure up.

43. Q. Did you pay any other notes?

A. Yes, sir. There was one that Morris Wait had.

79 44. Q. William Wait?

A. I borrowed the money of Morris. The note may have been made to William Wait.

45. Q. How much did you pay on that note?

A. I cannot tell you. I paid my share.

46. Q. Did all that you paid on account of these notes go in to Mr. Barnes?

A. Yes, sir; to apply on these notes.

47. Q. How much did you pay to Mr. C. P. Barnes altogether?

A. I paid him—I cannot tell exactly—I never kept any account of it. It was quite a number of years ago. I did not keep any account of it. When I got my name off, I let it go. I paid my proportion, whatever it was.

48. Q. Did you pay eight hundred dollars altogether?

A. Yes; more than that.

49. Q. One thousand dollars did you pay?

A. Yes. I paid more than a thousand, for I paid a thousand for that mortgage. I paid some four or five or six hundred afterwards; that was assessments.

50. Q. What do you mean by paying a thousand dollars on the mortgage?

A. I told him I would take it at a thousand dollars, and I paid the money.

51. Q. That money went on these notes?

A. Yes, sir. Then there was an assessment of several hundred dollars besides.

52. Q. You paid that assessment?

A. Yes, sir.

53. Q. You paid a thousand dollars and these assessments?

A. Whatever assessment there was.

54. Q. In cash?

A. I paid in gold, and had to make it gold to pay Mr. White. He would not even take currency.

55. Q. Then I understand you to say that you paid a thousand dollars and the assessment.

A. I paid more than one assessment.

56. Q. How much did the assessments that you paid amount to?

A. I should say from four to six hundred dollars; there was two or three assessments.

57. Q. You should say that they amounted to from four to six hundred dollars?

A. I should think five to six.

58. Q. You cannot tell any nearer than that?

A. I cannot recollect.

59. Q. Did the company ever pay you any money after June 10, 1858?

A. The Fox River Valley Company?

60. Q. Yes, sir.

A. No, sir; they never did.

61. Q. Did you receive any money on account of the company?

A. No, sir.

62. Q. Were these the notes of the company?

A. No, sir; they were our individual notes.

63. Q. Your individual notes?

A. Yes, sir.

64. Q. What was done with the money raised on the notes?

A. The company had it to do business with.

65. Q. Money that you raised while you was director?

A. Yes; if it don't interfere I will explain three or four words here. One thing that bothered me, we borrowed and paid a good many notes previous to this. I cannot designate which they were, whether be-
81 fore or after. I know Mr. Belden recollects of borrowing money and paying a good many before we had these mortgages; that is one thing that bothers me.

66. Q. When were these mortgages divided up between you?

A. They were sold, all but Prickett's, one at a time, whenever they could get anybody to take them, and that and three others, one of one hundred, one of two hundred, and one of five hundred Mr. Vaughn took—Mr. Samuel Vaughn. I took the thousand-dollar at the same time that he took the five hundred, two hundred, and one hundred.

67. Q. This is a two-thousand-dollar mortgage?

A. Yes, sir.

68. Q. How many did you take when you paid that two thousand dollars?

A. This one.

69. Q. Did you have any other of this batch of mortgages?

A. No, sir; I know I had to pay a good deal more of those notes than any other one, because they managed to get me on to every single one of them, as they thought I was a good hand to pay.

70. Q. Was Caleb P. Barnes the attorney of the company at this time?

A. I guess not at that time.

71. Q. You say the company was not on any of these notes; the railroad company?

A. No, sir, they were not; they were not signed by any man purporting to be anything but his own individual.

82 72. Q. There was not but one note to the Waites, was there?

A. The note was to Morris Wait, and not William Wait.

73. Q. When did you pay that thousand dollars to Mr. Barnes—was it when he assigned the mortgage to you?

A. Most of it was paid before.

74. Q. Did not you pay it to him at one time?

A. No; I had paid some half or more on some of these notes, and then I paid the other part and took the mortgage. I did not pay it all at one time. Then there was an assignment after that; I guess two or three.

75. Q. How far did you live from Richmond?

A. I live at Burlington; it is about twelve miles from my house to Richmond.

76. Q. Were you down to Richmond when they were taking these farm mortgages?

A. No, sir.

77. Q. You wasn't there at all?

A. I might have been over there on business—not any railroad business.

78. Q. Don't you recollect of being down there?

A. No, sir; at that time of the year they would not be likely to catch me so far from home as that, unless it was something pretty urgent.

79. Q. When was you first elected a director of this company?

A. In February, 1855.

80. Q. Wasn't it in 1854?

A. I thought it was in 1854. I said in my former examination that it was in 1854, but I find by looking at the books that it was in
83 February, 1855; it was a mistake. I had no access to anything to find the date.

81. Q. Did you ever take any subscriptions?

A. I went one day and helped some men take subscriptions.

82. Q. When was that?

A. In the summer of 1854.

83. Q. Did you take any farm mortgages?

A. They did..

84. Q. Same kind of mortgages as those taken at Richmond, were they?

A. Pretty much the same; same form; the papers given back by the company to the farmers I know were the same as the one given in this case.

85. Q. Did you live on the line of the road?

A. No; I lived about a mile or more off from it.

86. Q. Has there been any work done on the road, to your knowledge, since 1857?

A. Yes, sir; that is, in 1857 and 1858.

87. Q. When did you last see any work done on the road?

A. I do not remember; there was a heavy gang right west of there the winter of 1857 & 1858, and I think they worked there till about spring.

88. Q. What doing?

A. Grading.

89. Q. Has any work been done on it since that time?

A. There may have been and I not know it.

90. Q. Do you know of any?

A. No; I do not know, for I have not meddled with it.

91. Q. Do you know Mr. Prickett?

A. Yes, sir.

84 92. Q. How long have you known him?

A. I got acquainted with him about the time that this assignment to me was made; I guess in 1861.

93. Q. Did you know him before that?

A. No, sir.

94. Q. Didn't you have any conversation with him prior to the time you took this mortgage?

A. I think immediately after; two or three days after.

88. Q. Didn't you before?

A. I think not.

89. Q. Are you positive?

A. I say I think I am positive. I know I went about that time; I think a few days after; went down to try and settle with him.

90. Q. How long after you took it?

A. It may have been a week; it was not exceeding two weeks.

91. Q. You never saw him before that about it?

A. Not that I now remember.

92. Q. Never said anything to him about it?

A. I have no recollection of it.

93. Q. You had known him before that time, had you not?

A. No, sir; I never saw him until I went there to make a compromise about this mortgage.

94. Q. How much did he offer to give you at that time?

A. Five hundred dollars.

95. Q. To compromise it?

A. Yes, sir.

96. Q. You knew that this mortgage had been given to him by the company long before that?

85 A. I do not know how long after Barnes had it before I knew. I knew that he had some mortgages. I did not know who they were against, or anything about it.

97. Q. You knew he had mortgages against parties at Richmond?

A. Yes, sir; some Illinois mortgages; there was several of the mortgages that Mr. Barnes had that I did not know the parties.

98. Q. How did you happen to authorize Mr. Barnes to take these mortgages in lieu of the company's obligation to you to pay up these notes?

A. We thought the company's obligation was rather a poor thing to collect, and that we should get something on the mortgages.

99. Q. How long were you negotiating?

A. I never knew anything about it till, I think, Mr. Conover said they would pay us off the mortgages. We sent Mr. Barnes to get them.

100. Q. When was that?

A. June, 1858, I think; the assignment will tell.

101. Q. The assignment is dated June 10, 1858?

A. That is the date.

102. Q. How long had you been negotiating this matter before that time?

A. I do not know that there was anything said to me but once.

103. Q. Who spoke to you about it?

A. I do not know whether Mr. or Mr. Barnes.

104. Q. What did they say?

A. They said we could get something.

105. Q. How did they say you were to get it?

86 A. They said we could get something and probably sell them for something.

106. Q. What instructions did you give Mr. Barnes?
A. To do the best he could.
107. Q. Where did Mr. Barnes say these mortgages were given—these Richmond mortgages?
A. Some in our State and some in Illinois.
108. Q. When did you first learn what he had done?
A. After he came back to Burlington.
109. Q. How long after that was it?
A. Probably the next day.
110. Q. Did he tell you what he had done?
A. I presume he did.
111. Q. Did he tell you what mortgages he had taken?
A. I do not believe he designated the name of a man; he said he had got so many mortgages.
112. Q. When did he first tell you what mortgages he had got?
A. I do not know. It was some considerable time after before I knew about it.
113. Q. How long after?
A. I could not tell you. I have no recollection of the particular date.
114. Q. Where were these notes at the time?
A. In people's hands that owned them.
115. Q. When did you first know that Mr. Prickett had given a mortgage; that this Prickett mortgage was one that your attorney had taken?
A. I do not know, but I think it was a year after. I presume it was. I paid no attention to them.
116. Q. You presume you learned of it then—a year from that time?
A. I remember being in there, and he told me there was a year's interest due on them, and was going to write, and did write. It may
87 have been a year after.
117. Q. Then you knew where they belonged, did you?
A. Yes, sir. I knew they belonged near Richmond.
118. Q. All of them belonged near Richmond?
A. No, sir; not all of them. Some in our State. William Wait had one of five hundred dollars.
119. Q. In Richmond?
A. No; he lived in Wisconsin. We had one against him. He was cousin to the one we borrowed the money of; and there was one against William Ritman.
120. Q. Did any of these parties that held these notes give farm-mortgage—either Vaughn, or White, or Eldridge?
A. Eldridge gave a farm-mortgage. Vaughn gave a thousand-dollar mortgage, and cashed it himself.
121. Q. David Vaughn?
A. No; he was not a stockholder in the road.
122. Q. Were any of these other parties stockholders—White or Eldridge?
A. Eldridge was.
123. Q. Was White a stockholder in the road?
A. No, sir.
124. Q. Was Wait?
A. Morris Wait?
125. Q. Yes, sir.
A. If he was it was very small. I do not know but he took a share or two, and I do not know as he did. If he did it was very small.

Cross-examination by C. W. Bennett, esq., for complainant.

Q. You say there was paid a thousand dollars, and after that five or six hundred dollars assignment. Was that ever paid you by any one?

88 A. No, sir.

Q. Was that not all you paid on that account—fifteen or sixteen hundred dollars?

A. Yes, sir.

By Mr. BENNETT:

1, 2. I offer in evidence the note and mortgage in suit.

3. Assignment from the Fox River Valley Railroad Company to Caleb P. Barnes.

4. Assignment from Caleb P. Barnes to the plaintiff.

Papers marked as exhibits one, two, three, & four.

(Endorsed:) Filed June 30, '70. W'm H. Bradley, cl'k.

89 Exhibits "1" and "2" referred to in said deposition of Ephraim S. Sawyer are in the words and figures following, to wit:

"EXHIBIT 1."

This indenture, made the first day of September, in the year of our Lord one thousand eight hundred and fifty-seven, between Henry Prickett and Charlotte Prickett, his wife, of the county of McHenry, State of Illinois, parties of the first part, and the Fox River Valley Railroad Company, a body-corporate, created by the laws of the State of Wisconsin, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of two thousand dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the party of the second part, and to their assigns forever, all that certain real estate situated in the county of McHenry, and State of Illinois, and known and described as follows, to wit: The southwest quarter of the southwest quarter of section number thirty-four, (34;) also, the northeast quarter of the northwest quarter of section thirty-three, (33;) also the southeast quarter of the northwest quarter of section number thirty-three, (33,) all in township number forty-six, (46,) north of range eight, (8,) east of the third principal meridian, containing in all one hundred and twenty acres of land, according to Government survey, be the same more or less, to have and to hold the above-bargained premises, with the appurtenances, unto the

90 said party of the second part, and their assigns forever: Provided always, and these presents are upon this express condition, that if the said parties of the first part, their heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid to the party of the second part, or their assigns, the sum of two thousand dollars, in ten years from the first day of September, in the year of our Lord one thousand eight hundred and fifty-seven, and interest thereon from and after said first day of September, A. D. 1857, at the rate of eight per centum per annum, according to the tenor and effect of a certain promissory note, bearing even date herewith, executed by the said Henry Prickett, party of the first part, to the said party of the second part, and shall pay all taxes and assessments upon said premises, and every part thereof, at the time when the same shall become due, then these presents and the said note shall be null and void.

And the said parties of the first part do further covenant and agree that they will pay all taxes and assessments of every nature that may be assessed on said premises previous to the day appointed, in pursuance of any law of the State for the sale of lands for taxes; and in case of the non-payment of the said sum and interest mentioned in said note, or any part thereof, at the time or times above limited for the payment thereof, or in case of the non-payment of any taxes that may be assessed on said premises in manner aforesaid, then, and in either case, it shall and may be lawful for the said party of the second part, or their assigns,

91 and the said parties of the first part do hereby covenant and agree, and by these presents empower and authorize the said party of the second part, or their assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances thereunto belonging, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his or their heirs and assigns forever, good, ample, and sufficient deeds of conveyance in the law pursuant to the statute in such case made and provided; and out of the moneys arising from such sale to retain the principal and interest which shall then be due on the said note, together with the costs and charges, and all taxes, assessments, and charges on said premises which may be paid by the said party of the second part, or their assigns, rendering the surplus money, if any there be, to the said parties of the first part, their heirs, executors, administrators, or assigns, after deducting the cost of such vendue as aforesaid.

And the said Henry Prickett and Charlotte Prickett, for themselves and their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, and their assigns, that at the time of the ensealing and delivery of these presents they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee-simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in the manner and form as aforesaid, and that the same are free and clear of all incumbrances of whatever kind or nature soever, and against all and every person or persons lawfully claiming or to claim the whole or any part thereof, will forever warrant and defend.

92 In witness whereof the said parties of the first part part have hereunto set their hands and seals the day and year first above written.

HENRY PRICKETT. [L. S.]

CHARLOTT her + mark. PRICKETT. [L. S.]

Signed, sealed, & delivered in presence of—
ASA F. BENNETT.
W'M G. PARSONS.

STATE OF ILLINOIS,
County of McHenry, ss:

Be it remembered that on the eighth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, before me, Asa F. Bennett, a justice of the peace, personally appeared Henry Prickett and Charlotte Prickett, his wife, to me known to be the real persons whose names are subscribed to the foregoing mortgage, and they acknowledged that they executed the same for the uses and purposes therein set forth.

And the said Charlotte Pricket, on an examination separate and apart from her husband, having had the contents thereof fully made known to her by me, acknowledged that she executed the same and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without any compulsion of her said husband.

In witness whereof I have hereunto set my hand and seal, at Richmond, the day and year first above written.

ASA F. BENNET, *J. P.* [SEAL.]

93 This is certify that we, the undersigned, at the request of the Fox River Valley Railroad Company, of Wisconsin, have examined the premises described in the foregoing mortgage and find them to be worth thirty-six hundred dollars, at a fair and reasonable valuation, exclusive of the value of all buildings, barns, and out-houses situated therein.

Dated this eighth day of September, 1857.

ASA F. BENNETT.
SILAS M. STEVENS.

(Endorsed:) State of Illinois, McHenry County. Filed Jan. 4th, 1858, at 8 o'clock p. m. Recorded in vol. 15 of mortgages, page 13. George T. Kasson, recorder.

EXHIBIT 2.

Know all men by these presents that I, Henry Prickett, of the county of McHenry, and State of Illinois, being justly indebted to the Fox River Valley Railroad Company, a body corporate created by the laws of the State of Wisconsin, in the sum of two thousand dollars, lawful money of the United States of America, for full value received, do, in consideration thereof, hereby promise to pay to the said Fox River Valley Railroad Company, or order, the sum of two thousand dollars, at the expiration of ten years, from the first day of September, in the year of our Lord one thousand eight hundred and fifty-seven, together with interest thereon at the rate of eight per centum per annum, pay-
94 able annually on the first day of September in each year after the date hereof, principal and interest payable at the office of said company, in the city of Milwaukee, Wisconsin.

In witness whereof I have hereunto set my hand this first day of September, in the year one thousand eight hundred and fifty-seven.

HENRY PRICKETT.

(Endorsed:) Interest on the within cancelled up to June 10th, 1858.

(Endorsed:) Filed June 30, '70. W'm H. Bradley, cl'k.

Exhibit "3," referred to in said deposition of Ephraim S. Sawyer, is in the words and figures following, to wit:

EXHIBIT "3."

For and in consideration of the sum of three thousand eight hundred dollars, the Fox River Valley Railroad Company, a body corporate created by the laws of the State of Wisconsin, by William P. Young, its president, and Henry W. George, its secretary, duly appointed, have, and hereby do, assign and fully transfer to Caleb P. Barns, his heirs,

and assigns forever, the following-described mortgages, in all of which the said Fox River Valley Railroad Company is named as mortgagee, together with notes accompanying the same and mentioned therein, namely:

One mortgage, executed by Edwin Lester and Martha E., his wife, bearing date the 29th day of September, A. D. 1857, and recorded in the office of register of deeds of the county of McHenry, in the State of Illinois, in volume 15 of mortgages, on page 33.

95 One mortgage, executed by Richard N. Carr, bearing date the 1st day of September, A. D. 1857, and recorded in the office of register of deeds of the county of McHenry, in the State of Illinois, in volume 15 of mortgages, on page 43.

One mortgage, executed by William Waite, bearing date the 20th day of June, A. D. 1854, and recorded in the office of register of deeds of the county of McHenry, in the State of Illinois, in volume 10 of mortgages, on page 7, 8, & 9.

One mortgage, executed by Peter C. Wodell and Helen D., his wife, bearing date the 29th day of September, A. D. 1857, and recorded in the office of register of deeds of the county of McHenry, in the State of Illinois, in volume 15 of mortgages, on page 61.

One mortgage, executed by John S. Burrows and Maria, his wife, bearing date the 17th day of November, A. D. 1857, and recorded in the office of register of deeds of the county of McHenry, and State of Illinois, in volume 15 of mortgages, on page 69.

One mortgage, executed by Henry Prickett and Charlotte, his wife, bearing date the 1st day of September, A. D. 1867, and recorded in the office of register of deeds of the county of McHenry, in the State of Illinois, in volume 15 of mortgages, on page 13.

In witness whereof the Fox River Valley Railroad Company have hereunto set their corporate seal, by the hands of the president and secretary, and the said president and secretary have hereunto

96 subscribed their names this tenth day of June, eighteen hundred and fifty-eight.

By order of the board of directors.

[SEAL.]

W. P. YOUNG, *President.*
H. W. GEORGE, *Secretary.*

In presence of—
M. L. AYRES.
E. S. TAYLOR.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered that, on the 26th day of August, A. D. 1858, personally came before me William P. Young, president, and Henry W. George, secretary of the said Fox River Valley Railroad Company, to me known, and acknowledged that they signed the above instrument of assignment as such president and secretary, respectively, and affixed thereto the corporate seal of the said company for the uses and purposes therein set forth.

[SEAL.]

E. S. TAYLOR,
Notary Public, Mil. Co., Wis.

UNITED STATES OF AMERICA,
State of Wisconsin, ss:

SECRETARY'S OFFICE.

The secretary of state of the State of Wisconsin does hereby certify that Edward S. Taylor was, on the fourteenth day of November, A. D.

1857, appointed a notary public for the term of two years, to reside in the county of Milwaukee; that on the nineteenth day of November, A. D. 1857, he was duly qualified, and therefore empowered by the
97 laws of this State to administer oaths, take acknowledgments of deeds and other instruments in writing, and exercise all such other powers and duties as by the laws of nations and according to commercial usage may be exercised and performed by notaries public, and that full faith and credit are due and should be given to his official acts as such notary.

In witness whereof I have hereunto set my hand and affixed the great seal of the State at the capitol, in Madison, this second day of September, A. D. 1858.

[SEAL.]

L. W. JONES,
Secretary of State.

(Endorsed:) Filed June 30, '70. W'm H. Bradley, cl'k.

Exhibit "4," referred to in said deposition of Ephraim S. Sawyer, is in the words and figures following, to wit:

"EXHIBIT 4."

For value received, I, Caleb P. Barns, hereby fully assign and transfer to Ephraim S. Sawyer, his heirs, and assigns forever, one certain mortgage, bearing date September 1st, 1857, executed by Henry Prickett and his wife to the Fox River Valley Railroad Company, and assigned to me, recorded in the register's office of McHenry County, Illinois, in volume 15 of mortgages, on page 13.

Also the note specified therein as collateral security.

98 Witness my hand and seal this 6' day of March, 1861.

C. P. BARNS. [SEAL.]

In presence of—
A. E. WEBB.
ORSON SHELDEN.

STATE OF WISCONSIN,
R *County:*

The above-named Caleb P. Barnes acknowledged the due execution by him of the foregoing assignment before me this 6th day of March, 1866.

Witness my hand.

ORSON SHELDEN,
Justice of the Peace.

(Endorsed:) Filed June 30, 1870. Wm. H, Bradley, cl'k.

The following deposition of Henry Prickett, taken before D. A. Potter, a notary public, on the 11th day of May, 1870, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

2nd dep. Prickett.

UNITED STATES OF AMERICA,
Northern District of Illinois:

E. S. SAWYER,
vs.
HENRY PRICKETT.

Deposition of Henry Prickett, a resident of the county of McHenry and State of Illinois, aged about 62 years, a witness on the part of the defendant in the above-entitled suit now pending in said
99 court, produced, sworn, and examined before D. A. Potter, a notary public in and for said county of McHenry, on the 11th day of May, 1870, at the office of said notary public, in the town of Richmond, county of McHenry, Illinois.

Said witness being first duly sworn, deposes and says as follows:

I have been sworn in this case in Chicago, before the master in chancery.

Question on p't defend. Who solicited the stock of him to this railroad, viz: Fox River Valley R. R.?

(Objected by plaintiff's counsel, as having already been interrogated on that subject & fully answered.)

Answer. The stock was solicited by Conover & Sibley. Conover represented himself as one of the directors and agent of the road in soliciting stock; does not know as Sibley was an agent or had a stock-book, and did not know as Sibley solicited any stock.

Question by counsel for defen. Under what condition did you take this stock?

(Objected to by plaintiff's counsel.

First, because the witness has been interrogated, and answered on that matter.

2nd. The conditions embodied in a written agreement which has been put in evidence by defence.)

Answer. First, Mr. Conover told me if I would subscribe there would be no interest to pay; they would pay the interest upon the mortgage, and that the dividends upon the road would would pay the principal before the time was up. Conover said the rolling-stock should be
100 on in 18 months. This was in August, 1857. The road has no not been built. The mortgage was given under the representations of Connover, as stated above.

HENRY PRICKETT.

STATE OF ILLINOIS,
County of McHenry, ss:

I, D. A. Potter, a notary public of said county, do certify that the foregoing deposition was taken by me at my office in the town of Richmond, on the 11th day of May, A. D. 1870; that the said witness was first duly sworn; and that after said deposition was written it was carefully read to said witness, and he thereupon signed the same.

Witness my hand and seal this 11th day of May, 1870.

D. A. POTTER, [SEAL.]
Notary Public.

The following deposition of Herman Gibbs, taken before D. A. Potter, a notary public, on the 11th day of May, 1870. was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of Gibbs.

UNITED STATES OF AMERICA,
Northern District of Illinois:

E. S. SAWYER
vs.
HENRY PRICKETT.

Deposition of Heman Gibbs, a resident of McHenry county, and State of Illinois, aged 63 years, being first duly sworn in above-named cause, deposes and says as follows:

101 Was a director in the Fox River Valley Railroad; knows nothing of the taking of the Prickett mortgage. Barnes & McKisson solicited and took mortgages for the company. Conover was the principal agent here soliciting stock for this road, was director of the road some time; that E. S. Sawyer was director; knows of Sibley soliciting stock for the company, sometimes with Conover, and sometimes alone. Heard Sibley say he had taken stock in the road to the amount of five hundred dollars, and had no land; that is my impression.

HEMAN GIBBS.

STATE OF ILLINOIS,
County of McHenry, ss:

I, D. A. Potter, a notary public in and for said county, do certify that the foregoing deposition was taken by me at the time and place mentioned in the caption thereof; that the said witness was first duly sworn, and that after said deposition was written it was carefully read to said witness, and he thereupon signed the same.

Witness my hand and official seal this the 11th day of May, A. D. 1870.

D. A. POTTER, [SEAL.]
Notary Public.

The following deposition of D. A. Potter, taken on the 11th day of May, 1870, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of D. A. Potter.

UNITED STATES OF AMERICA,
Northern District of Illinois:

102 E. S. SAWYER
vs.
HENRY PRICKETT.

Deposition of D. A. Potter, 2d, a resident of McHenry County, Illinois, aged 35 years.

Being first duly sworn in above-named cause, deposes and says as follows:

Has heard that Prickett give a mortgage to the Fox River Valley Railroad; knows of Connover being here a taking stock for the company. Knows of John Sibley's soliciting stock for the same company.

Question. Do you know what course was pursued by agents in soliciting stock for the Fox River Valley R. R., of Wisconsin; what inducements were held out to himself and others?

(Objected as incompetent and immaterial by plaintiff's counsel.)

Answer. Conover was in the corner store of Wodell & Potter, in Richmond. Peter Wodell, Peter Whitney, and witness were present. Conover urged Wodell and Whitney, to take stock and they thought they could take only $500 each and Whitney went out to the store, and Conover said to Wodell, I want you to take $1,000; for Whitney and others won't take any more than you, as you are a merchant here, and if you will subscribe $1,000, when you give the mortgage I, Connover, agree that it shall be made for $500; and the mortgage was made for five hundred dollars. Knows of John Sibley soliciting stock for the company; does not know whether he was employed by the company or not; Sib-
103 ley solicited me to take stock in this company.

Sibley said he had taken stock in this company, and it would advance the value of his property, and that as I was in business here I ought to take stock, as it would help my business & business in town. About the same time, in Wodell & Potter's store, Connover solicited W. A. McConnel to take stock in the road; Connover & McConnel went into the back-room, and after being there a short time came out, and W. A. McConnel went to the desk and subscribed three thousand dollars in stock on a subscription list or book that Connover had; from my best recollection, was a partner of Wodell at the time; from personal knowledge knows of no stock being taken afterwards.

Cross-examined:

Cannot tell the exact time when this transaction between Connover, McConnel, & Wodel' was first spoken of; thinks it was six months or a year afterwards. Whitney had gone out when Connover & Wodell talked in regard to taking the $1,000. Thinks there were a number in at the time McConnel subscribed, but cannot remember the names of any particular ones except Connover, McConnel, Wodell, & myself; was in business with Wodell until in 1858 or 1859; business at present, has a farm rented and looks after that & works his garden.

Direct:

It was a general talk in regard to the buuckam stock about six months or a year after it was subscribed, as at that time Gardner was about having trouble or getting into law about paying his stock, and Gardner spoke to me about it. I should say from memory that McConnel
104 took the pen from my hand and subscribed thirty shares.

D. A. POTTER,

STATE OF ILLINOIS, *County of McHenry, ss:*

I, D. A. Potter, a notary public of said county, do certify that the foregoing deposition was taken by me at the time & place mentioned in the caption thereof; that the said witness was first duly sworn, and that after said deposition was written it was carefully read to said witness and he thereupon signed the same.

Witness my hand and seal this 11th day of May, 1870.

D. A. POTTER, [SEAL.]
Notary Public.

The following deposition of R. G. McClellan, taken before D. A. Potter, a notary public, on the 11th day of May, 1870, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of R. G. McClellan.

UNITED STATES OF AMERICA,
Northern District of Illinois.

E. S. SAWYER
vs.
HENRY PRICKETT.

Deposition of R. G. McClellan, a resident of McHenry County, Illinois, aged 58 years.

Being first duly sworn in above-named cause, deposes, and says as follows:

Question. Were you solicited to take stock in this the Wisconsin Fox River Valley Railroad.

105 (Objected as immaterial and incompetent.)

Answer. Was solicited to take stock by John Sibley and Philo Belden; thinks Belden told me he was a director of the road.

Question. What conversation was had between Sibley, Belden, and yourself, in regard to taking stock?

(Objected as immaterial and otherwise incompetent.)

Answer. John Sibley says, "We have come to get you to take a few hundred dollars stock in the Fox River Valley R. R." I pretty readily consented to take $500 stock and mortgage 40 acres of land. Sawyer told me he had bought some mortgages in Illinois of the company's, and Pricket's among the rest, and they did not cost him over fifty-five cents on a dollar, from the fact they told me the road would certainly be built. Mr. Sibley wanted me to take a thousand dollars instead of five hundred, and said to me I ought to do it as they were all subscribing and helping liberally; he, Sibley, had taken five hundred in the Illinois division of the road, and had taken five hundred in the Wisconsin, and making him a thousand dollars; in the same conversation said W. A. McConnell had a large subscription in the Illinois division of the road, & recently had taken two or three thousand dollars in the Wisconsin division. This talk did not induce me to increase my subscription as I was some in debt, and would take five hundred and no more; I believed

106 what they told me at the time, but afterwards, when Belden was president, he told me that John Sibley had not taken a dollar's worth of stock in Wisconsin division of the road.

R. G. McCLELLAN.

STATE OF ILLINOIS,
County of McHenry, ss:

I, D. A. Potter a notary public of said county, do certify that the foregoing deposition was taken by me at the time and place mentioned in the caption thereof; that the said witness was first duly sworn, and that after said deposition was written it was carefully read to witness and he thereupon signed the same.

Witness my hand and seal this 11th day of May, 1870.

D. A. POTTER, [SEAL.]
Notary Public.

The foregoing deposition of S. M. Stevens, taken before D. A. Potter, a notary public, on the 11th day of May, 1870, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of S. M. Stevens.

UNITED STATES OF AMERICA,
Northern District of Illinois.

E. S. SAWYER
vs.
HENRY PRICKETT.

Deposition of S. M. Stevens, a resident of McHenry County, Illinois, aged 63 years.

Being first duly sworn in above-named cause, deposes and says as follows:

107 Question. Was you solicited to take stock, and by whom?

(Objected as immaterial and otherwise incompetent.)

Answer. By John Sibley.

Question. What was the conversation between you?

(Objected as immaterial and otherwise incompetent.)

Answer. I objected to taking stock, but he said the road would be built within one year, and the road would pay for itself before the note would become due, and I would never have anything to pay; he said he had no farm, but had or was agoing to mortgage his village property for stock in the road. Sibley took my subscription for $500, and afterwards I gave a mortgage.

Cross-ex.

Summons served on me to foreclose; received a propostion to settle and think I shall accept; knows nothing of the Prickett mortgage.

S. M. STEVENS.

STATE OF ILLINOIS,
County of McHenry, ss:

I, D. A. Potter, a notary public of said county, do certify that the foregoing deposition was taken by me, at the time and place mentioned in the caption thereof; that the said witness was first duly sworn, and that after said deposition was written it was carefully read to said witness, and he thereupon signed the same.

Witness my hand and seal this 11th day of May, 1870.

D. A. POTTER. [SEAL.]
Notary Public.

108 The following deposition of J. S. Burrows, taken before D. A. Potter, a notary public, of McHenry County, in the State of Illinois, on the 11th day of May, 1870, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of Burrows.

UNITED STATES OF AMERICA,
Northern District of Illinois:

E. S. SAWYER
vs.
HENRY PRICKETT.

Deposition of J. S. Burrows, a resident of McHenry County, Illinois, aged 58 years.

Being first duly sworn in above-named cause, deposes and says as follows:

I was solicited to take stock in the Wisconsin division of the Fox River Valley Railroad. Mr. Connover, in conversation with him, frequently soliciting me to take mortgage stock, said the mortgages would be drawn upon interest, but they (the company) would keep the interest upon the mortgages until they were liquidated, and all the mortgages they took were taken with that agreement. I did not take stock with Conover, but was called upon by John Sibley. He said he was soliciting stock for the road. He spoke to me three or four times, and finally I saw him in the post-office, at A. T. Brown's store. I think W. A. McConnel was present. He spoke to me again there, and insisted very hard that I should take 8 shares, and mortgage land. He said he (Sibley) had taken five shares, and I was able to take
109 as much as he had, reiterating the same story that the road would pay the interest, & dividends pay the stock. He at this time referred to Squire McConnel, wanting to know if he didn't think I was able. He said he did, and I was induced to take five hundred dollars in stock. I gave a mortgage, and the mortgage is paid. Mr. Sawyer told me that himself, Barnes, and others, had taken mortgages of the company at fifty cents on the dollar, and Prickett and Wodell were among them, and Wodell's, he said, was paid at two hundred and fifty dollars, or, that he had agreed to take that amount.

(The whole of J. S. Burrows' testimony was taken under objections as being irrelevant and incompetent.)

J. S. BURROWS.

STATE OF ILLINOIS,
County of McHenry, ss:

I, D. A. Potter, a notary public of McHenry County, do certify that the foregoing deposition was taken by me, at the time and place mentioned in the caption thereof; that the said witness was first duly sworn, and that after said deposition written it was carefully read to said witness, and he thereupon signed the same.

Witness my hand and seal this 11th day of May, 1870.

[SEAL.] D. A. POTTER,
Notary Public.

The following deposition of W. A. McConnel, taken before D. A. Potter, a notary public, on the 11th day of May, 1870, was filed in said cause on the 30th day of June, 1870, in the words and figures following to wit:

110 *Dep. of W. A. McConnel.*

UNITED STATES OF AMERICA,
Northern District of Illinois:

E. S. SAWYER
vs.
HENRY PRICKETT.

Deposition of W. A. McConnel, of McHenry County, Illinois.

Being first duly sworn in above-named cause on the part of the plaintiff, deposes and says as follows:

I took some stock in this road. I took fifteen hundred dollars. Connover and Parsons were here together. I was in Brown's & Wills' store

when I subscribed. Have no knowledge of there being any proposition to me to take or put my name down for any greater amount than I meant to take. Never signed but one list, and never signed for any greater amount than for one thousand five hundred dollars.

Cross-ex.

Has no recollection of signing but once; thinks that was in a small book. Can not say whether he ever met Connover in Wodell's & Potter's store. He might have done so, but never subscribed but once, and never for three thousand dollars.

W. A. McCONNEL.

STATE OF ILLINOIS,
County of McHenry, ss:

I, D. A. Potter, a notary public, of said county, do certify that the foregoing deposition was taken by me at the time & place
111 mentioned in the caption thereof; that the said witness was first duly sworn, and that after said deposition was written it was carefully read to said witness, and he thereupon signed the same.

Witness my hand and seal this 11th day of May, 1870.

[SEAL] D. A. POTTER,
Notary Public.

(Endorsed:) Filed Jan. 30, '70. W. H. Bradley, cl'k.

112 The following deposition of W'm A. McConnel, taken before J. T. Moulton, master in said court, on the 24th day of November, 1869, on the part of the complainant, was filed in said court on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of McConnel.

In the circuit court of the United States of America, within and for the northern district of Illinois.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT. } In chancery.

Master's report of evidence taken for complainant.

113 Pursuant to an order made by the said court in the above-entitled cause, on the first day of November, A. D. 1869, wherein and whereby it was referred to J. Tilden Moulton, one of the masters in chancery of the said court, to take the proofs in the said cause and report the same to the court, I, the said master, do hereby report, that on the twenty-fourth day of the same November, I was attended by the said parties, and by their respective solicitors, and by Wm. A. McConnell, a witness produced on behalf of the complainant, and the said McConnel was by me first duly cautioned, and sworn to testify the truth, the whole truth and nothing but the truth, in the said cause, and he did thereupon, upon examination, depose, testify, and say:

Direct exam'n of W'm A. McConnel:

1. Int. Where do you reside?
A. I reside in Richmond, McHenry Co., State of Illinois.

2. Int. Are you acquainted with Henry P'ickett, who is the defendant in this action?

A. Yes, sir.

3. Int. He resides in your town, does he?

A. He does.

4. Int. Did you, in the year 1857, know the railroad corporation known and styled the Fox River Valley Railroad Company?

A. There was a corporation, I think, which had some agents through that place about that time.

5. Int. Were you a subscriber, Mr. McConnel, to the stock of that company?

A. I was.

114 6. Int. State for what amount you was such subscriber.

A. In all, I subscribed fifteen hundred (1,500) dollars.

7. Int. What charact' of subscription was that; whether mortgage subscription or cash subscription?

A. It was to be mortgage subscription, running ten years. I understood it so to be, and with eight per cent. interest.

8. Int. When was your subscription made, as near as you can recollect?

A. I think it was made in the fall.

9. Int. Of what year?

A. In the fall of the year 1857.

10. Int. State whether you ever gave a mortgage for that subscription which was contemplated by it.

A. I never did.

11. Int. Did you pay or adjust the subscription with the company; and, if so, how?

A. I made an arrangement in the spring before the mortgage was given to pay cash subscription. I was to pay them twelve hundred dollars.

12. Int. In the spring of what year?

A. Of the year 1858.

13. Int. Was that mortgage subscription of fifteen hundred dollars so converted into a cash subscription of twelve hundred dollars?

A. Yes, sir.

14. Int. Did you or not pay cash subscription?

A. I did; and received twelve shares of stock for it.

15. Int. What amount of money did you pay?

A. I paid twelve hundred dollars.

115 16. Int. I will ask you to state, Mr. McConnel, whether you ever made an agreement with the company that you would subscribe fifteen hundred dollars, and that they would receive in payment of that fifteen hundred dollars one thousand dollars, or any less sum?

(Objected to by counsel for def't.)

A. No, sir; never.

17. Int. At the time you made your subscription, Mr. McConnel, or at any time after that, were you in the employ of this company, acting as its agent or otherwise in obtaining subscriptions to their capital stock?

A. I was not employed by the company or anybody else. I volunteered and went out and gave assistance in getting stock, but I never received a shilling from the company, nor any promise of any.

19. Int. Have you your stock still in the company?

A. No, sir; I have sold it.

20. Int. About when did you so sell it?

A. Two or three years ago this fall. I sold it to a gentleman in Burlington, or near Burlington.

21. Int. State the details of the arrangement by which your fifteen-hundred-dollar mortgage subscription was converted into a cash subscription of twelve hundred dollars.

A. They proposed to me to change my subscription, the mortgage subscription, to a cash subscription, and only pay them twelve hundred dollars for my subscription; that was eighty cents on the dollar. I was at that time paying another man's subscription, and I got a
116 deduction; that was a mortgage subscription too. I got a deduction upon that by paying the money on it. I regretted afterwards that I made the arrangement, but it was a square trade. I did not go back upon them at all.

22. Int. This you say was in the spring of the year 1858?

A. In 1858; yes, sir; I have got one or two notes with me now, that I paid at the bank in Milwaukee.

23. Int. This agreement was made at or about the day you paid your subscription, was it?

A. Yes, sir.

24. Int. And you had no such agreement at the time you originally subscribed?

A. Not at all.

25. Int. And never until the spring of 1858, about the time you paid? No, sir.

26. Int. At the time you subscribed the fifteen hundred dollars mortgage stock, was there any agreement between you and the company except such as the subscriptions imported, which was that you were to give the mortgage for fifteen hundred dollars?

A. Not any; they had a little book that they were taking stock on. I subscribed on that, with their agent. I do not know who he was; I do not remember, but I am inclined to think it was Conover; I am not positive.

27. Int. Did you at or about the time you subscribed, in the fall of 1857, have any conversation with Mr. Prickett in regard to this
117 enterprise, and in regard to his subscribing to the stock of the company?

A. I do not know that I did ever; he was not one of the men, I think, and I was not paid to solicit stock subscriptions.

28. Int. Did you at that time, and do you now, know John Sibley?

A. I am acquainted with a man by that name in our place.

29. Int. Was he, in the fall of the year 1857, in conjunction with yourself, getting up stock for this company or assisting in getting up stock for this company?

A. Yes, sir; I was out with him a few days engaged in getting stock subscriptions, or he with me perhaps; the engagement then was that I had a horse and buggy, and went with me and done most of the talking.

30. Int. Was he in any way connected with the company as agent or otherwise?

A. I do not know anything about it.

31. Int. During the fall of 1857, Mr. McConnel, was there a meeting held of the citizens of Richmond in relation to the enterprise of building this road to your knowledge?

A. I think there was.

32. Int. At any such meeting or meetings was there any committee appointed by the citize s to take action in the matter to your knowledge?

A. I think there was.

33. Int. Do you now remember who constituted any such committee or committees?

A. Mr. Sibley was one, I was one, Mr. Wells, and Mr. Brown.

118 Cross-examination:

1. C. int. Where do you reside?

A. I reside in Richmond, McHenry County, Illinois.

2. C. int. How long have you resided there?

A. I came there in 1837; I have been there ever since—since May, 1837.

3. C. ?. You stated in your direct examination that you became a subscriber to the capital stock of this company; please state at whose solicitation you became such subscriber.

A. I think at Mr. Conover's solicitation; there was another young man with him.

4. C. int. Was not Mr. Conover president of the company?

A. Not to my knowledge.

5. C. int. Was it the object of this man to obtain subscription to this capital stock?

A. I think it was.

6. C. int. What means did they resort to to get up an interest in the community there?

(Objection as to any representations not made to these parties defendant.)

A. In the first place, in the fall of 1857, there was some gentlemen came from Milwaukee; my impression is that the president of the road came down and took dinner with me; there was three men, I think. I think the president was James Neelan, who formerly lived at our place; in 1837 he became president of the road and came down there and held some meetings and made some very fine speeches, and told what they would do for us if we would sign for stock, and told us a great many things, and those statements induced the people to take stock.

119 7. C. int. Was there much interest excited in the minds of the community there?

A. Yes, sir; there was considerable; we had a road which was called the Fox River Road, and we were very anxious to have an extension of that road to Milwaukee; they held out some strong inducements, and the people subscribed quite liberally.

8. C. int. You subscribed fifteen hundred dollars, did you not?

A. I did.

9. C. int. Was your name the first on the list?

A. That I could not say.

10. C. int. What is your best recollection?

A. I have not got much recollection about it now; when a subscription of that kind is started they go to me about the first man.

11. C. int. You think they came to you about this first?

A. I cannot say; they might and might not.

12. C. int. How much did you subscribe for at this time?

A. I subscribed fifteen hundred dollars to that stock.

13. C. int. When was it that you made the arrangement from a mortgage subscription to a cash subscription?

A. It was in the spring of 1858.

14. C. int. How did you make an arrangement to pay twelve hundred dollars?

A. I paid a majority of it in money.

15. C. int. How much did you pay in money?

A. Well, sir; I let them have five head of cattle; I let them have

some flour, and the balance in money; I should think about nine
120 hundred dollars in money, balance in stock, which was used upon the road. The cattle were driven to Burlington, and most of the flour was taken there. The amount of produce that I paid was accepted by their agent in Richmond, who was one of the directors. The most of the money was paid at the bank in Milwaukee.

16. C. int. Were you ever sworn as a witness in a case wherein this company was plaintiff and one Alexander Gardner was defendant, where the company sought to recover judgment against Mr. Gardner for subscriptions made to the capital stock of the company?

A. I never was.

17. C. int. Have you at any time had any relation with this company in any way, except as a subscriber to their capital stock?

A. Yes, sir.

18. C. int. Please state what relation?

A. They elected me once or twice director.

19. C. int. How long did you serve as such?

A. I cannot say whether I served one or two years; when, I cannot say exactly.

20. C. int. Was it in 1857?

A. My impressions are that I was elected in 1858 or '9, and I met with them a few times—once or twice at Milwaukee, and once or twice at Burlington.

21. C. int. How much of the road has been completed?

A. I do not know that any.

22. C. int. How much work has been done on the road?

A. That I cannot tell you.

23. C. int. How long did they continue work upon the road after your subscription?

121 A. They might have contined work in the year 1859; I think they worked most of 1858, and I think a part of 1859, though I am not positive.

24. C. int. Has there no work been done since then?

A. Not to my knowledge.

25. C. int. Do you know whether Mr. Sibley ever subscribed for any capital stock in this road?

A. I do not.

Redirect examination:

1. Int. Were the cattle and the flour which went in part payment of your subscription, turned out to and accepted by the company at their market value at the time?

(Objection by def't's counsel?)

A. The contractor had the cattle and the flour and I had credit from their agent at Richmond as for so much cash paid.

2. Int. In the fall of 1857, state whether or not there was work being done upon this road; grading or otherwise?

A. I think not, but I may be mistaken. I think the work was commenced in the spring of 1858; other parties know better than I do about that. I am not aware of the time when the work was commenced, nor do I know just where they commenced to work upon the road.

3. Int. You are not positive as to when you were a director, Mr. McConnel?

A. No, sir.

122 4. Int. You got your stock in 1858?

A. Yes, sir.

5. Int. You could not have been a director before you got your stock?
A. No; I think not.

(Endorsed:) Filed June 30, 1870. W'm H. Bradley, cl'k.

123 The following deposition of Peter Forbes, taken before , on the part of the complainant, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

United States circuit court, northern dis't of Illinois.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT. } In chancery.

Deposition of Peter Forbes, on the part of complainant, Feb'y 9, 1870.

PETER C. FORBES, being called as a witness on the part of the complainant was examined in chief by Mr. Bennett, & testified as follows' after being duly sworn, Feb'y 9, 1870:

1. Q. Where do you reside?
A. At Burlington, Wisconsin.
2. Q. Did you reside there in year 1857?
A. Yes, sir.
3. Q. Were you acquainted with the Fox River Valley Railroad Company from the time of its organization, and have you been from that time to this?
A. I was; not so much of late.
124 4. Q. State whether or not you were one of the commissioners or corporators named in the charter of that company?
A. I was.
5. Q. Were you present or not at the time of the first meeting of the commissioners named in the charter?
A. I was.
6. Q. At what place was that meeting held?
A. At Mukwonago.
7. Q. In what county?
A. In Waukesha County.
8. Q. Was that meeting or not held in pursuance of public notice, previously given?
A. It was.
9. Q. Who of the corporators named in the charter were present?
A. Without the aid of the book I might not be able to state. Mr. Belden, Mr. Ely, Mr. McKisson, Mr. Denton, Mr. Pratt, Mr. Vanderpool.
10. Q. Can you state the number?
A. There were eight, (8.)
11. Q. Did the commissioners there present organize a meeting of themselves?
A. They did. Yes, sir.
(Objected to on the ground that the record should be produced.)
12. Q. I will ask whether you occupied any official position in reference to that meeting?
A. I acted as chairman.
13. Q. State whether or not the subscription-books for subscriptions to the stock of said company were opened then and there?

A. They were.

125 14. Q. Do you know what amount of stock was then and there subscribed, in round numbers?

(Objected to on the ground that there is better evidence of the fact.)

A. $30,000, I think.

15. Q. I will ask you to state now whether any sum or sums were paid by the parties subscribing to that stock, at that time; and, if so, how much.

A. Five per cent. of the amount was paid in.

16. Q. Did or did not James C. McKisson at that time become a subscriber to the stock of this company?

A. He did.

(Objected to on the ground that the books themselves, or whatever subscription-books were opened by the directors, are the best evidence of the fact.)

17. Q. Did he or not pay the 5 per cent. upon the stock subscribed for by him at that time?

A. He did.

Cross-examined by Mr. Miller, of counsel for the defendant:

1. Q. When was this meeting held?

A. It was in June, 1853; I do not remember the day.

2. Q. Where?

A. Mukwonago, Waukesha County, Wisconsin.

3. Q. What part of the day was the session?

A. It might be towards the middle of the day, perhaps after 12 o'clock.

4. Q. Where?

A. In Andrew E. Elmore's store.

5. Q. In the store itself?

A. Yes, sir.

126 6. Q. The public store?

A. Yes, sir.

7. Q. How long were you together there?

A. I could not state exactly; perhaps 3 or 4 hours.

8. Q. Did the meeting last that length of time?

A. It might not be as long as that; as long as it would naturally last.

9. Q. Did you have any books there?

A. Yes, sir.

10. Q. Were records kept?

A. Yes, sir.

11. Q. Where are the books?

A. I suppose they are here.

12. Q. Were there at that time as many as eight of the directors mentioned in the act incorporating the company present?

A. Yes, sir.

13. Q. During the session of that meeting?

A. They did not remain there, some of them withdrew.

14. Q. Why did they withdraw?

A. I could not give the reason.

15. Q. Did any controversy arise?

A. Yes, sir.

16. Q. What was the controversy?

A. A party wanted to control the election; they found they hadn't enough to control the election and failed to attend.

17. Q. Who wanted to control the election?

A. Mr. Barstow.

18. Q. He left the meeting?

A. He was not able to be there.

19. Q. I will ask you what the controversy was?

127 A. I do not know that there was any controversy after the organization.

20. Q. Prior?

A. Prior to its organization there was an effort by certain parties to control the organization.

21. Q. Prior to the election of yourself as chairman—there was a controversy prior to that, was there?

A. Yes, sir.

22. Q. Who were the parties to that controversy?

A. Mr. Barstow was one, Judge McArthur one; it is so long since it occurred I have forgotten about it.

23. Q. Prior to the organization to your election as chairman, did any controversy arise at that meeting?

A. No, sir; not that I am aware of.

24. Q. I understood you to say that there did.

A. Not at that meeting, no controversy that I am aware of; all those parties, with the exception of Mr. Pratt, and he afterwards, signed the minutes of that meeting.

25. Q. Who was present at that meeting?

W'm S. Hawkins, James C. McKisson, Richard E. Ely, Winchel D. Bacon, Peter Forbes, Philo Belden, Preston Danton, Pliny M. Perkins, and Mr Pratt was also present.

26. Q. All present at that meeting were they?

A. Yes, sir.

27. Q. Was that the first meeting that was had?

A. The first meeting.

28. Q. Was there any controversy at that meeting?

A. Not at that meeting.

29. Q. Did any one withdraw?

A. Mr. Pratt, Mr. Hawkins, and Mr. Vanderpool withdrew, I think before the meeting closed.

128 30 Q. Before it organized?

A. No, sir.

31. Q. What reason did they give?

A. I do not know that any at that time. Mr. Elmore came to the door after we had organized and said, "What are you doing here?" and they got up and left after the meeting organized and the books declared open to receive stock subscriptions.

32. Q. Didn't they go with another party?

A. They did.

33. Q. Wasn't there another organization effected?

A. Claimed to be.

34. Q. Before or after yours.

A. After.

35. Q. Did they meet and formally accept a charter and open subscription books.

A. I think they did.

36. Q. And went through the form of organizing a company, didn't they?

A. I think they did.

37. Q. Did they take subscriptions to the stock?

A. I think they did.

38. Q. Didn't they claim to be the company?
A. I think so.
39. Q. These men that withdrew, after you was elected chairman, didn't they object to proceeding at that time?
A. No, sir.
40. Q. Did they vote for the nomination of chairman?
A. I could not say.
41. Q. Wasn't there a controversy preceding the organization of the meeting, among those present?
129 A. Not to my knowledge.
42. Q. What was the controversy about?
A. As I before stated there was a desire upon the part of those persons at Waukesha to control the charter.
43. Q. Didn't they file proceedings in the court?
A. No, sir.
44. Q. Against your company?
A. Not to my knowledge.
45. Q. How long did this other organization profess to represent the company?
A. I could not state; perhaps a year; maybe less.
46. Q. You say this meeting was held in a store?
A. Yes, sir.
47. Q. There had been no meeting prior to this time.
A. None.
48. Q. Is what purports to be the signatures of parties to certificates, page 43 on the record which you introduce, in the handwriting of the parties.
A. No, sir.
49. Q. Whose handwriting is it?
A. The secretary's of the company. I would not be positive whether Hawkins was present at the first meeting or not, but he subsequently signed the certificate.
50. Q. Where is the certificate which he signed.
A. My impression is that it is burned up; the building that the office was in took fire and burned up the books and papers.
51. Q. You are not sure that Mr. Hawkins was there the first time?
A. I will not be positive about Mr. Hawkins.
130 52. Q. If Mr. Hawkins was not there when that first meeting was held, then there w*as* eight present.
A. Those parties were there.
53. Q. You are positive that there w*as* as many as eight?
A. Yes, sir.
54. Q. Did the other organization claim to constitute a majority of the directors?
A. They did; yes, sir.
55. Q. Didn't a majority of the directors meet and organize under the other organization?
A. I think they did.
56. Q. And opened books?
A. I think they did. I do not know that they did. They claim to have done so.
57. Q. About what time did they meet, Mr. Forbes?
A. It would be subsequent to that time, probably thirty days, twenty or thirty days.
58. Q. So that a majority went on under the notice and organized?
A. Yes, sir.

59. Q. The majority of those named in the charter?
A. Yes, sir.
60. Q. And claimed to be a separate company?
A. Yes, sir.
61. Q. Opened books and had stock subscribed?
A. I understand so.
62. Q. The mortgages that were given in this State were given to the company that organized when you was chairman and not to the other company?
A. Not to the other company.
63. Q. Where is the subscription to the stock which you speak of?
131 A. I could not answer that. I have not been connected with it for several years.
64. Q. Was there any subscription to the stock at the time of this meeting?
A. Yes, sir.
65. Q. After it organized or before?
A. After it organized.
66. Q. After the election of directors.
A. Yes, sir.
67. Q. Who subscribed for the stock?
A. I could not tell you.
68. Q. Was the subscription made on the same day as the election when you were chairman?
A. The stock was subscribed at the time.
69. Q. Was it subscribed after the directors were chosen? You chose directors did you not?
A. Not at that time.
70. Q. Stock was subscribed at that time?
A. Yes, sir; and five cents upon a share paid in.
71. Q. Who subscribed for the stock?
A. Those parties named in the list here, and another party, Mr. Milo Smith.
72. Q. He was not one of the directors?
A. No, sir?
73. Q. These persons you say subscribed at that time?
A. Yes, sir.
74. Q. Do you know exactly how much stock was subscribed for at that time?
A. There was $30,000 subscribed at that time.
75. Q. Are you sure of that.
A. Yes, sir.
76. Q. Who paid money in?
A. All the parties.
77. Q. The parties there?
132 A. Yes, sir.
78. Q. Who did they pay it to?
A. Mr. Bacon.
79. Q. There upon the spot?
A. Yes, sir.
80. Q. How much money was paid in?
A. Some money, some checks, and some notes.
82. Q. Did parties give their notes for the stock?
A. Yes, sir.
83. Q. Instead of paying money they gave their notes?

A. Yes, sir.
84. Q. How much was taken and paid for in notes?
A. I could not tell you.
85. Q. About how much?
A. Perhaps ⅔d's.
86. Q. Wasn't there three fourths?
A. Possibly; I could not say.
87. Q. Wasn't it all taken in notes.
A. No, sir.
88. Q. Who put in money?
A. Mr. Bacon put in ($50) fifty dollars in gold.
88. Q. Who did he pay it to?
A. At that time he paid it to himself; subsequently he paid it to me. I was elected treasurer of the company. I took the money and the notes of Mr. Bacon, and receipted to him for them?
89. Q. Whatever Mr. Bacon took, he took in notes and money?
A. Yes, sir; Mr. Ely, I think, paid in money.
90. Q. How much?
A. Seventy-five dollars, ($75,) I think.
91. Q. Are you sure?
A. I would not be possitive; there was so few present, they had
133 to subscribe more stock than they intended to, and hadn't the money.
92. Q. With the exception of this fifty dollars, ($50,) wasn't it all paid in notes?
A. No, sir; I paid in ten dollars.
93. Q. How much did you take?
A. Two shares at that time.
94. Q. How much money in all was paid?
A. There might have been seventy-five, ($75;) about that.
95. Q. The balance in notes?
A. The balance in notes and checks.
96. Q. How much in checks?
A. A thousand-dollar check was paid by Mr. Smith.
97. Q. About two-thirds, you say, in notes?
A. Yes, sir; about that.
98. Q. How long did the notes run?
A. They were payable on demand.
99. Q. All of them?
A. Yes, sir.
100. Q. They afterwards went into your hands?
A. Yes, sir.
101. Q. How long after this?
A. About the month of June.
102. Q. It appears from the books that the directors were chosen on the 6th of June?
A. Yes, sir.
103. Q. Then they went into your hands; you was elected director at that time?
A. Director and treasurer also.
104. Q. Then these notes went into your hands?
A. Yes, sir.
105. Q. These men that had subscribed for stock at the first
134 meeting elected the directors at the second meeting?
A. Yes, sir.
106. Q. Were these notes ever paid?

A. Yes, sir.
107. Q. How long afterwards?
A. Along in the fall of the same year.
108. Q. Are you sure these notes were all paid?
A. Yes, sir.
109. Q. During the fall of that year?
A. Yes, sir.
110. Q. Are you positive of that fact?
A. Some of them might have run longer. They were all paid very soon after.
111. Q. Didn't they renew their notes?
A. No, sir.
112. Q. They subsequently paid the money?
A. Yes, sir.
113. Q. How long did you remain an officer of this railroad; up to what time?
A. I think up to 1856 or 1857; I am not positive which.
114. Q. Were you an officer of the company when these mortgages were obtained at Richmond?
A. No, sir; I was not.
115. Q. You had nothing to do with it at that time?
A. No, sir; I had not.
116. Q. Did Mr. Belden?
A. Yes, sir.
117. Q. What did he have to do with it?
A. He was president of the company.
118. Q. Did Mr. Conover have anything to do with it at that time, the time the mortgages were taken in Richmond?
135 A. Yes, sir.
119. Q. What was his business?
A. He was a director; he had been a director.
120. Q. He continued so after.
A. I think he did.
121. Q. Did Mr. Parsons have anything to do with it?
A. Yes, sir; he was employed by the company.
122. Q. How?
A. He was secretary of the company.
123. Q. While these mortgages were being taken he was acting as agent?
A. I think he was.
124. Q. Did Mr. Barnes have anything to do with it?
A. No, sir; he was the attorney for the company in its first organization.
125. Q. Wasn't he the attorney for the company then?
A. No, sir.
126. Q. What is his business?
A. An attorney and banker it has been; I do not know what it is now.
127. Q. Was he the attorney for the company when these mortgages were taken?
A. No, sir.
128. Q. What was his business at that time?
A. Banking business.
129. Q. Up to what date was he the attorney?
A. I cannot state what time he ceased to act.
130. Q. About what time?

A. I think in 1853, 1854, or perhaps 1855.

131. Q. Wasn't he connected with the company when you left it?

A. No, sir; I think not.

132. Q. He was the attorney up to the year 1855?

136 A. About that time.

133. Q. Did he have any transactions with the company after that?

A. I do not recollect of his having any.

134. Q. What is your best impression about it?

A. My impression is that he had none directly.

135. Q. Did he indirectly?

A. Indirectly it was something like this: these mortgages and others were assigned to him by the company, as trustee, in trust, for the benefit of outside parties, to protect them from liability.

136. Q. Do you recollect about that transaction?

A. Something about it; yes, sir.

137. Q. These mortgages were assigned to him for the protection of outside parties?

A. Yes, sir.

Q. Did you have anything to do with it?

A. Yes, sir.

138. Q. What?

A. I had to pay a large amount of money. That was one very important item.

139. Q. I mean with this transaction?

A. I was one of the parties in the trade.

140. Q You are therefore interested in this suit, are you not?

A. Not at all; not the slightest.

141. Q. You were interested while Mr. Barnes held the mortgage?

A. Yes, sir.

142. Q. Up to the time he held the mortgage, you was interested?

A. Yes, sir.

142. Q. How many more with you?

137 A. Mr. Bond, Mr. Ely, Mr. Belden, Mr. Perkins, Mr. Sawyer, and myself. I do not recollect any others.

143. Q. Do you mean Sawyer, the complainant in this suit?

A. Yes, sir.

144. Q. These mortgages were assigned to Mr. Barnes to secure the parties you have named?

A. Yes, sir.

145. Q. Mr. Belden was one of them, was he?

A. Yes, sir.

146. Q. What interest had he in it?

A. It was to protect him for money he had advanced to the company.

147. Q. Do you know how much he advanced?

A. No, sir.

148. Q. What had Mr. Sawyer to do with it?

A. He advanced money.

149. Q. Had he nothing to do with the company?

A. He was a director.

150. Q. For how long a time was he a director?

A. About two years, I think.

151. Q. When did he commence to be a director?

A. I think he was elected in 1855, and continued a part of 1856 and 1857?

152. Q. He was a director then, when these mortgages were taken?
A. Not these mortgages; I think not.
153. Q. Wasn't he a director when Mr. Prickett's mortgage was taken?
A. I think not.
154. Q. You are not positive whether he was or not, are you.
A. I am very positive he was not.
138 155. Q. Do you recollect when he ceased to be a director?
A. I think in the spring of 1857.
156. Q. What connection had he, at the time, with the company, besides being a director?
A. Nothing further that I am aware of.
157. Q. Had he ever had any business transactions with the company?
A. No further than as a director and stockholder of the company.
158. Q. Did he take any stock in the company?
A. Yes, sir.
159. Q. How much?
A. Five thousand dollars, ($5,000.)
160. Q. How much did he pay?
A. Paid it all. That was the first subscription. My impression is that he paid more than that.
161. Q. Do you know how much he paid?
A. Yes, sir.
162. Q. How much did he pay?
A. He gave his mortgage for $5,000.
163. Q. On the farm?
A. Yes, sir.
164. Q. Where?
A. In Burlington.
165. Q. When?
A. 1854, I think.
166. Q. Did he give a mortgage just like this one?
A. Yes, sir. Subsequently the company made him cash it at 80 per cent.
167. Q. When?
139 A. Some time after the mortgage was made. It may have been in 1855.
168. Q. But he was elected a director, wasn't he?
A. No, sir; not at that time. After that.
169. Q. How long after?
A. I could not tell you when he executed it.
170. Q. What other transactions did Mr. Sawyer have with the company?
A. I do not know of any other.
171. Q. You say that these mortgages were assigned to secure Mr. Sawyer, yourself, and some others?
A. Yes, sir.
172. Q. What was the occasion of giving Mr. Sawyer any security?
A. Mr. Sawyer, myself, and others, had endorsed paper, and given individual notes. These notes they still held against us.
173. Q. The company held your endorsed notes?
A. Not the company; other parties.
174. Q. Held your individual notes?
A. Yes, sir; given for the company.
175. Q. When were they given?

A. They were given at different times.

176. Q. Were they given prior to the year 1857, when these mortgages given?

A. Yes, sir.

177. Q. Were all of them given prior to that time?

A. Yes, sir.

178. Q. About what time were they given?

A. Running along at different periods, in 1855, 1856, & 1857.

179. Q. All prior to the time when these mortgages were given at Richmond?

140 A. Yes, sir. Mr. Sawyer retired a short time before I did. When the office was moved to Milwaukee, I retired.

180. Q. When did you retire?

A. In the spring of 1857, I think, was when I retired.

181. Q. Wasn't it in the spring of 1858?

A. I think not.

182. Q. It was the spring of 1858 when Mr. Sawyer retired?

A. I think not. It was near the time I retired.

183. Q. Was it a month from that time?

A. It might have been.

184. Q. These mortgages were assigned to Mr. Barnes to protect you. Hadn't he any personal interest in the mortgages?

A. Not at all.

185. Q. You say you have no interest in this suit?

A. No, sir; none.

186. Q. When did your interest cease?

A. After the assignment was made to Mr. Barnes, we arranged among ourselves that, as fast as we could pay a certain portion, we would take those papers from Mr. Barnes, and be discharged of every other liability.

187. Q. In other words, you divided between you the papers that Mr. Barnes had, and these went to Mr. Sawyer?

A. Yes, sir.

188. Q. When did that division take place?

A. I could not give the exact date.

189. Q. About when?

A. The winter following the date of the assignment.

190. Q. The assignment was in writing?

A. Yes, sir.

191. Q. Was the settlement in writing?

141 A. Yes, sir.

192. Q. Where is that writing now?

A. I presume it has been destroyed.

193. Q. Who destroyed it?

A. I presume it was destroyed by the fire.

194. Q. Was the assignment destroyed?

A. I do not think it was.

195. Q. Was there any writing executed between you?

A. No, sir.

196. Q. How many mortgages did you get?

A. One.

197. Q. For how much?

A. A thousand dollars.

198. Q. How much did Mr. Sawyer get?

A. I do not remember now what the amount was.

199. Q. Where was your mortgage executed?

A. I think in Burlington.

200. Q. Do you recollect the time these mortgages were executed in Richmond?
A. I do not.
261. Q. You had nothing to do with it at that time?
A. No, sir.
202. Q. These notes were outstanding of yours at that time, weren't they?
A. Yes, sir. The notes were given some time before I retired.
203. Q. While you was a director?
A. Yes, sir.
204. Q. Mr. Sawyer got his while he was a director?
A. Yes, sir.
205. Q. Didn't you know the fact that mortgages were obtained at Richmond?
142 A. Only from hearsay. I knew they were taking mortgages there.
206. Q. How did you know it?
A. From common report.
207. Q. Who told you?
A. Mr. Belden, Mr. Parsons, Mr. Conover.
208. Q. That they were taking mortgages out there at Richmond?
A. Yes, sir.
209. Q. You knew of it at the time they were being taken?
A. Yes, sir.
210. Q. You knew the kind of mortgages they were taking?
A. I supposed the same kind we were taking in Burlington.
211. Q. They were all uniform in character?
A. Yes, sir.
212. Q. Where did Mr. Sawyer live at that time?
A. In Burlington.
213. Q. Did you have any conversation with him about taking a mortgage?
A. I think I did.
214. Q. Were you both interested in taking these mortgages?
A. Yes, sir.
215. Q. Both knew what they were doing?
A. As much as outside parties can.
216. Q. You kept yourselves posted, so that you knew these mortgages were being taken?
A. Yes, sir.
217. Q. And had frequent conversations with Mr. Sawyer about it?
A. Yes, sir. I presume so. We were both around there, and met often.
218. Q. Did you solicit mortgages?
143 A. I did.
219. Q. Did you at Richmond?
A. No.
220. Q. Any of these mortgages assigned to Barnes?
A. Yes, sir.
221. Q. You got some of those taken?
A. Yes, sir.
222. Q. How many?
A. It may be two or three. Mr. William Ritman, Mr. William Weed, and some others.
223. Q. Did Mr. Sawyer exert himself to get parties to take mortgages?

A. They were given at different times.
176. Q. Were they given prior to the year 1857, when these mortgages given?
A. Yes, sir.
177. Q. Were all of them given prior to that time?
A. Yes, sir.
178. Q. About what time were they given?
A. Running along at different periods, in 1855, 1856, & 1857.
179. Q. All prior to the time when these mortgages were given at Richmond?
140 A. Yes, sir. Mr. Sawyer retired a short time before I did. When the office was moved to Milwaukee, I retired.
180. Q. When did you retire?
A. In the spring of 1857, I think, was when I retired.
181. Q. Wasn't it in the spring of 1858?
A. I think not.
182. Q. It was the spring of 1858 when Mr. Sawyer retired?
A. I think not. It was near the time I retired.
183. Q. Was it a month from that time?
A. It might have been.
184. Q. These mortgages were assigned to Mr. Barnes to protect you. Hadn't he any personal interest in the mortgages?
A. Not at all.
185. Q. You say you have no interest in this suit?
A. No, sir; none.
186. Q. When did your interest cease?
A. After the assignment was made to Mr. Barnes, we arranged among ourselves that, as fast as we could pay a certain portion, we would take those papers from Mr. Barnes, and be discharged of every other liability.
187. Q. In other words, you divided between you the papers that Mr. Barnes had, and these went to Mr. Sawyer?
A. Yes, sir.
188. Q. When did that division take place?
A. I could not give the exact date.
189. Q. About when?
A. The winter following the date of the assignment.
190. Q. The assignment was in writing?
A. Yes, sir.
191. Q. Was the settlement in writing?
141 A. Yes, sir.
192. Q. Where is that writing now?
A. I presume it has been destroyed.
193. Q. Who destroyed it?
A. I presume it was destroyed by the fire.
194. Q. Was the assignment destroyed?
A. I do not think it was.
195. Q. Was there any writing executed between you?
A. No, sir.
196. Q. How many mortgages did you get?
A. One.
197. Q. For how much?
A. A thousand dollars.
198. Q. How much did Mr. Sawyer get?
A. I do not remember now what the amount was.
199. Q. Where was your mortgage executed?
A. I think in Burlington.

200. Q. Do you recollect the time these mortgages were executed in Richmond?
A. I do not.
261. Q. You had nothing to do with it at that time?
A. No, sir.
202. Q. These notes were outstanding of yours at that time, weren't they?
A. Yes, sir. The notes were given some time before I retired.
203. Q. While you was a director?
A. Yes, sir.
204. Q. Mr. Sawyer got his while he was a director?
A. Yes, sir.
205. Q. Didn't you know the fact that mortgages were obtained at Richmond?
142 A. Only from hearsay. I knew they were taking mortgages there.
206. Q. How did you know it?
A. From common report.
207. Q. Who told you?
A. Mr. Belden, Mr. Parsons, Mr. Conover.
208. Q. That they were taking mortgages out there at Richmond?
A. Yes, sir.
209. Q. You knew of it at the time they were being taken?
A. Yes, sir.
210. Q. You knew the kind of mortgages they were taking?
A. I supposed the same kind we were taking in Burlington.
211. Q. They were all uniform in character?
A. Yes, sir.
212. Q. Where did Mr. Sawyer live at that time?
A. In Burlington.
213. Q. Did you have any conversation with him about taking a mortgage?
A. I think I did.
214. Q. Were you both interested in taking these mortgages?
A. Yes, sir.
215. Q. Both knew what they were doing?
A. As much as outside parties can.
216. Q. You kept yourselves posted, so that you knew these mortgages were being taken?
A. Yes, sir.
217. Q. And had frequent conversations with Mr. Sawyer about it?
A. Yes, sir. I presume so. We were both around there, and met often.
218. Q. Did you solicit mortgages?
143 A. I did.
219. Q. Did you at Richmond?
A. No.
220. Q. Any of these mortgages assigned to Barnes?
A. Yes, sir.
221. Q. You got some of those taken?
A. Yes, sir.
222. Q. How many?
A. It may be two or three. Mr. William Ritman, Mr. William Weed, and some others.
223. Q. Did Mr. Sawyer exert himself to get parties to take mortgages?

A. Yes, sir.
224. Q. Did he get any to take mortgages?
A. Yes, sir. I think so.
225. Q. Any of these assigned to Barnes?
A. I do not think he did. They were outside his beat. He aided us some in 1857.
226. Q. Did you try to get any in 1857?
A. I did not.
227. Q. You knew they were getting mortgages in 1857?
A. Yes, sir.
228. Q. Mr. Sawyer knew it, didn't he?
A. I presume he did.
229. Q. You talked frequently about it?
A. Yes, sir. I presume so.
230. Q. You say that you did not try to get parties to take mortgages in 1857?
A. Yes, sir.
231. Q. Why not?
A. I was not then in the company's employ. I had only a general interest.
232. Q. You took a good deal of interest in the matter?
144 A. Yes, sir.
233. Q. The company was owing you?
A. Yes, sir.
234. Q. Pretty heavily?
A. Yes, sir; about four thousand dollars; that was heavy for our little place out there.
235. Q. How much was the company owing Mr. Sawyer while these mortgages were being taken in Richmond?
A. Without going into nice figuring I could not give the exact amount. We were equally interested; we endorsed the paper together.
236. Q. How much did they all amount to?
A. In the neighborhood of ten thousand dollars, ($10,000.)
237. Q. Was the company taking mortgages at any other place than at Richmond?
A. Along the line of the road, wherever they could get them.
238. Q. I mean in 1857?
A. Not that I am aware of.
239. Q. When did the company cease to take mortgages, except at Richmond?
A. It may be in 1854, and may be in 1855.
240. Q. Between 1854 or 1855 and the time these mortgages were taken at Richmond the company did not take any mortgages?
A. No, sir.
241. Q. Not any at all?
A. No, sir; for some time they were quiet, not doing anything.
242. Q. Do you know how many they took there?
A. No, sir; the business was done in Milwaukee; I had very little direct intercourse with it.
145 243. Q. From 1854, the time when they ceased to take mortgages in Richmond, the company did not do anything?
A. No, sir.
244. Q. They didn't do anything at all; they were not building the road or taking the mortgages; is that what you mean to say?
A. That is it.
245. Q. And these debts incurred were all incurred prior to the time when these mortgages were taken in Richmond—in 1854 & 1855?

A. Yes, sir.
246. Q. Did the company incur any debts at all after 1857—first of of January, 1857?
A. I could not tell.
247. Q. Do you know of their incurring any debts?
A. No, sir.
248. Q. Then they didn't do any work after the first of January, 1857?
A. I could not give you the exact date that they suspended or commenced; they were quiet for some time.
249. Q. You do not know that they were doing any work in 1857?
A. I could not say that they did.
250. Q. Don't you know they did not?
A. I could not say that either, sir; it is so long ago that my memory fails.
251. Q. You do not know of their doing any work at that time?
A. Not positively; they were at work two different times, just about what time I could not tell.
252. Q. They didn't contract any debts did they?
146 A. Not that I am aware of.
253. Q. They did not do any work after these mortgages were taken, did they?
A. I think they did.
254. Q. Do you know they did?
A. My impression is that in 1858 they were doing work upon the road.
255. Q. Are you positive they did?
A. Yes, sir.
256. Q. What work did they do in 1858 upon the road?
A. Grading and providing ties and bridge-timber.
257. Q. Where?
A. Between Richmond and Milwaukee.
258. Q. How long a distance?
A. Twenty miles.
259. Q. How much grading did they do?
A. Fifteen miles, between Burlington and Richmond.
260. Q. I mean in 1858.
A. I cannot tell.
261. Q. You say they did not incur any debts after 1857?
A. I could not say positively, not to my knowledge.
262. Q. You are not positive about their doing any work after that?
A. I am very positive about their doing work.
263. Q. What work you cannot tell?
A. Work such as grading, and such work as that.
263. . All these individuals for whose benefit these mortgages were assigned had been directors in the company, hadn't they?
A. Yes, sir.
264. Q. And the liability, the indebtedness, of the company to
147 them was incurred while they were directors?
A. Yes, sir.
265. Q. During how long a time was this indebtedness accumulating?
A. It may be two or three years' time and it may not be as long as that.
266. Q. Were the notes ever due?
A. Yes, sir, they were.
267. Q. How long had they been due at the time the Prickett mortgage was taken?
A. Some time; I could not give you the exact time.

268. Q. Two or three years?
A. No, sir.
269. Q. How long?
A. A year or more. The notes were carrried along by paying the interest upon them.
270. Q. Did the company, after this indebtedness accrued, have any other resources, acquire any new resources other than these farm mortgages?
A. Not to my knowledge.
271. Q. So that their assets were only increased by these mortgages?
A. Yes, sir.

Redirect examination by C. W. Bennett, esq.

Q. You have made a statement concerning the rival organization; have you any personal knowledge about that?
A. I have no personal knowledge.
Q. So that you are not to be understood as swearing to that from your personal knowledge, but simply from information?
A. Simply from information.

(Endorsed:) Filed June 30th, 1870. W'm H. Bradley, cl'k.

148 The following deposition of William G. Parsons, taken before J. T. Moulton, master in said court, on the ninth day of February, 1870, on the part of the complainant, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of Parsons.

WILLIAM G. PARSONS, being called as a witness, and examined in chief by Mr. Bennett, on the part of the complainant, testified as follows, Feb'y 9, 1870:

1. Where do you reside?
A. In Milwaukee.
2. Q. Do you know, or did you ever see the defendant, Henry Prickett, who lives in the town of Richmond, McHenry County, in this State?
A. I have seen him.
3. Q. I will ask you to look at that note and mortgage and state whether you ever saw them before?
(Note & mortg. shown witness.)
A. Yes, sir; I have seen them before; both of them.
4. Q. Were you present at the time of their execution?
A. Yes, sir.
5. Q. Where?
A. Near the village of Richmond.
6. Q. At Mr. Prickett's place?
A. At Mr. Prickett's residence.
7. Q. Are the signatures to the note and mortgage the proper signatures of Mr. Prickett and wife?
A. They are.
8. Q. Made and executed in your presence?
149 A. Signed in my presence.
9. Q. Were you, at the time that mortgage was executed, secretary of the Fox River Valley Railroad Company, of Wisconsin?
A. No, sir; I was acting as its agent.
10. Q. What official relation did Mr. Conover have to that company?
A. He was one of the directors.

11. Q. He was not president of that company?
A. No, sir.
12. Q. Did you take Mr. Prickett's subscription?
A. I did not.
13. Q. Were you present when it was taken?
A. No, sir.
14. Q. What was your business there at that time?
A. I went down with the subscription-book to take this mortgage.
15. Q. At the time you went there to take the mortgage, and at the time the mortgage was taken, state whether or not Mr. Prickett made any objection to giving the mortgage?
(Objected to as leading.)
A. It is a good while ago. I know that Mr. Prickett himself did not object to executing the mortgage; his wife, I think, did.
16. Q. Was anything said by him; and, if so, what, in relation to the amount which the subscription-book showed as having been subscribed by him, being a larger amount than the amount he had subscribed?
A. Not to me, or in my presence.
17. Q. Are you an officer in this company now?
A. I suppose I am. I was the last secretary elected. I have had no business in that capacity for several years.
150 18. Q. I will ask you to look at this book which is open before you, particularly pages 41, '2, & '3; state what the book is.
A. It is a book of the records of the proceedings of the Fox River Valley Railroad Company.
19. Q. I will ask you to state whether or not the book is a copy or the original book?
A. It purports to be an original book.
20. Q. What is it in fact?
A. It is a copy.
21. Q. State from what and what occasioned the making of the copy?
A. I think in the year 1859, what was called Union block in Milwaukee, wherein was the office of the company, was burned, and the books of the company were very badly charred, so that it became necessary to copy them, because they could not be used without breaking to pieces.
22. Q. Were you familiar with the original book of which this is supposed to be a copy?
A. I was.
23. Q. Is the matter written on the pages which I have named of this book, copied from the original book or from entries in the original book?
A. They are.
24. Q. State, as near as you can, the exact condition of the original book from which this is copied.
A. The cover was so badly burned that the book came out. The leaves were more or less scorched, somewhat crisp. The writing was legible.
25. Q. Was the paper brittle?
A. Yes, sir.
26. Q. What became of the old book from which this was cop-
151 ied?
A. I have not seen it in six or seven years.
27. Q. Was it or not passed aside as worthless after this was made?
A. I suppose it was. I forget when I saw it last; it is so long ago.

(Parties agree that the book referred to may be on hand at the hearing and read in evidence without further proof of loss of original.)

28. Q. Look at the paper now shown you, and state what it is, in the first place?

A. It is an assignment of the company of certain mortgage-shares to Caleb B. Barnes.

29. Q. I will ask you whether the signatures to that assignment are the signatures of William P. Young and H. W. George?

A. Yes, sir; William P. Young, as president, and H. W. George, as secretary.

30. Q. Were they such officers at that time?

A. They were.

31. Q. State whether there is a seal opposite their names & if it is the seal of the company, which was in use by the company at that time.

A. It is.

32. Q. What, if any, statement, Mr. Parsons, did you make or was made in your presence to Mr. Prickett or his wife, at the time this mortgage was taken, to induce them to execute the mortgage?

A. I do not know that I can recollect all that was said.

33. Q. The substance, if you can.

A. The substance of what was said was the benefit that we
152 thought would accrue to him and the people generally, through that section of the country, by having the road built.

34. Q. Did you state to Mrs. Prickett at that time that the railroad would make 30 per cent. and would give her and her family six hundred dollars ($600) a year always?

A. No, sir.

35. Q. Was such a statement made by any one at that time on that occasion?

A. No, sir; I think not.

36. Q. Who was with you?

A. A justice of the peace there, named Bennett.

37. Q. Did he make any such statement to your knowledge?

A. No, sir.

38. Q. Were you together all the time at Prickett's house?

A. I think so.

39. Q. Did you or he, in that interview, state to her, that it would probably make 30 per cent. and would give her family six hundred dollars ($600) a year always?

A. No, sir.

40. Q. Did you or he, in her presence, then and there, state to her, that it would be an everlasting benefit to her to sign it, or anything to that effect, and, if so, what?

A. I do not think there was a statement made of that kind. I stated to her that it would be a benefit to them in that regard; it would give them a market for their wheat, &c.

Cross-examination Feb'y 10, 1870, by Mr. Miller, for def't.

153 1. Q. When did you first became acquainted with this railroad company?

A. In the summer of the year 1857.

2. Q. What part of the summer?

A. I think in August, a short time before this mortgage was given.

3. Q. Had you any connection with the company prior to that time?

A. I had not.

4. Q. In what capacity were you employed by them, in August?

A. I was their agent.

5. Q. For what purpose were you their agent?

A. For the purpose of traveling along the line of the road, taking mortgages, taking stock. I took some stock-subscriptions; making collections for the stock subscribed.

6. Q. You were then employed as agent of the company?

A. Yes, sir.

7. Q. How long did you continue to act in that capacity?

A. Until the next spring, I think, in March or April.

8. Q. Did you go to Richmond?

A. I did.

9. Q. How long were you there altogether?

A. I was there several times during that fall. I cannot now recollect how much.

10. Q. For what purpose did you go there?

A. I was down taking up these mortgages or having these mortgages executed, that had already been subscribed.

11. Q. Did you take any stock while there?

A. Not in Richmond.

12. Q. How many mortgages did you get executed while you were there?

154 A. I do not now recollect. I could not tell without reference to the books. I took, I should say, somewhere in the neighborhood of a dozen mortgages, and perhaps twenty.

13. Q. Do you recollect the amount?

A. No, sir.

14. Q. These mortgages were generally executed by farmers, were they not?

A. Yes, sir.

15. Q. You say you called upon Mr. Prickett to have him execute the mortgage?

A. Yes, sir.

16. Q. Who directed you to go to Mr. Prickett?

A. I had no particular directions to go to him. I had a stock-subscription book.

17. Q. Where is that book?

A. I do not know. I have not had charge of the books of the company for six or seven years. I think Mr. Belden has most of the books.

18. Q. That book is probably in the possession of the company, is it not?

A. So far as I know; some of the books were burned.

19. Q. Were they burned on purpose?

A. No, sir; there was a fire in the building in which the office was situated.

20. Q. Mr. Prickett is a farmer there, is he not?

A. Yes, sir; he was a farmer at that time.

21. Q. Did you give him back an obligation from the company at the time you took his mortgage?

A. I did.

22. Q. State whether it is similar to the one now handed to you?

(Here shown to witness paper marked as Exhibit B to the de-

155 position of Henry Prickett on the part of the defendant in this case.)

23. Q. That is the one you handed to him?
A. It is a similar one.
24. Q. Was anything said between you and Mr. Prickett or Mrs. Prickett, at the time of the execution of the mortgage and delivery of this paper?
A. Yes, sir.
25. Q. State all that was said upon that occasion.
A. I do not think I can do it.
26. Q. As near as you can.
A. My recollection now is that Mr. Prickett himself did not object to executing the mortgage, but that Mrs. Pricket made some objection to it, and this gentleman, who with me, Squire Bennett, an acquaintance of theirs and a resident of that county, did most of the talking. The substance of what was said was that the road would be a great benefit to her as well as other residents in that vicinity. The whole of the conversation I cannot repeat. I do not recollect it.
27. Q. You do not recollect what you did say?
A. No, sir.
28. Q. You took part in the conversation?
A. Yes, sir; I took some part in it.
29. Q. And what you said you do not now recollect?
A. No; all I know is that that was the general tenor of the conversation.
30. Q. Do you recollect what Mr. Prickett said?
A. I do not.
31. Q. You cannot tell what he said?
A. He was a man that did not say a great deal.
32. Q. I am not asking you about that; do you recollect what he said?
156 A. I do not, only he hesitated upon account of his wife's objections to signing the mortgage.
33. Q. Do you recollect what he said?
A. I do not.
34. Q. Was this farm where his home is?
A. It was where he was living. My recollection now is that he did not give a mortgage upon his whole farm, and not upon his home. I know he had a very large farm.
35. Q. It was a part of his home farm, wasn't it?
A. Yes, sir; but I think it did not include that portion upon which his buildings were.
36. Q. Did you know Mr. Sawyer at that time?
A. I do not think I did.
37. Q. Do you recollect whether you did or not?
A. I became acquainted with him about that time; whether that fall or the next winter, I do not know.
38. Q. How did you happen to get acquainted with him?
A. I became acquainted, at Burlington, that fall, with Mr. Sawyer, and met him at my headquarters the winter after this mortgage was given.
39. Q. Did you ever have any conversation with him about these mortgages?
A. No, sir.
40. Q. Did you ever say anything to him about it at all?
A. About these mortgages?
41. Q. These mortgages you got in Richmond.
A. No, sir.

42. Q. Did you ever tell him how many you got?
A. I have no recollection about it. I do not think I ever talked with him about these mortgages.
43. Q. Did you ever talk with him about the railroad?
A. Yes, sir.
157 44. Q. Upon what point?
A. No particular point
45. Q. What subject about the railroad?
A. I do not recollect the conversations we had.
46. Q. Was he living at Burlington?
A. On a farm near Burlington.
47. Q. Was he a director of the company at that time?
A. I think not.
48. Q. Do you know?
A. I am positive he was not.
49. Q. You gave to each of the parties from whom you took a mortgage a similar paper to the one shown you, did you not?
A. Yes, sir.
50. Q. When did the board of directors have their last meeting?
A. December 21, 1865, was the last I ever attended, and the last I know of.
51. Q. Were you secretary at that time?
A. Yes, sir.
52. Q. What did they do at that meeting?
A. They forfeited some stock of several of the stockholders, and made some changes in the directorship.
53. Q. Do you know any of the persons whose stock was forfeited at that time?
A. I know some of them.
54. Q. How many of them?
A. C. D. Davis. I know J. L. Williams, Nelson R. Norton.
55. Q. Are not those men good pecuniarily?
A. I do not know. I have not known them for a great many years, except Davis. He is a Milwaukee man. I have had executions against him that I could not collect.
158 56. Q. How about the others?
A. I do not know. I do not know whether they are good or not.
57. Q. When was Mr. Sawyer last elected director of the company, and for how long a time was he elected?
A. On the 21st day of January, 1857.
52. Q. For how long?
A. For one year.
(Witness referred to record of company in answering preceding question.)
53. Q. How often were you at Richmond altogether?
A. I was there occasionally during that fall and coming winter, into the next spring.
54. Q. Did you try to get farmers to take stock in the road?
A. Not at Richmond. I did take some few shares south of Richmond, in the town of Ringwood.
55. Q. Who did you get to take stock?
A. I do not recollect the names now.
56. Q. Did you try to get any of the people of Richmond to go around to get the farmers to take stock?

Re-direct examination by C. W. Bennett, esq.:

Q. State from the book, if you are able, how long Mr. Sawyer continued to be a director after January, 1857?

A. Up to March 25th, 1857.

Q. I will ask you how he ceased to be a director at that time?

A. He tendered his resignation, and it was accepted by the board.

Q. On that day?

A. On that day.

(Endorsed:) Filed June 30th, 1870. W. H. Bradley, cl'k.

159 The following deposition of John Sibley, taken on the 9th day of February, 1870, on the part of the complainant, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of Sibley.

JOHN SIBLEY, a witness called upon the part of complainant, was duly sworn, and being examined in chief by C. W. Bennett, esq., testified as follows, Feb'y 9, 1870:

1. Q. Where do you reside?

A. Richmond, McHenry County.

2. Q. In this State?

A. Yes, sir; in this State.

3. Q. Do you know Mr. Henry Prickett?

A. Yes, sir.

4. Q. He resides in the town of Richmond, in McHenry County, does he?

A. Yes, sir.

5. Q. Did you know him at or about the first of September, 1857?

A. Yes, sir.

6. Q. He then resided in that township, did he?

A. Yes, sir.

7. Q. Did you, at that time, know of an organization called the Fox River Valley Railroad Company of Wisconsin?

A. About that time.

8. Q. Were you, at or about that time, in any way connected with or employed by that company?

A. I never was connected with nor employed by them.

160 9. Q. State whether you ever solicited Mr. Prickett to subscribe for the stock of that company; and, if so, what you stated or represented to him, if anything?

A. I did not take Mr. Prickett's subscription. I do not know that I ever said a word to Mr. Prickett about the subscription; about the railroad or subscribing.

10. Q. Did you not in any way influence, or seek to influence, Mr. Prickett to make any subscription to the stock of this company?

A. I never did.

11. Q. Did you ever state to Mr. Prickett that you had mortgaged your house and lot to this company in payment for stock, or otherwise?

A. No, sir; never.

12. Q. Were you a subscriber to the stock of this company?

A. No, sir. I never subscribed for the stock of this company?

13. Q. Was there, at that time, and is there now, a company in this State called the Fox River Valley Railroad Company?

A. Yes, sir.

14. Q. The name is similar?

A. Yes, sir.

15. Q. Were you or not a subscriber to the stock of that company?

A. Yes, sir.

16. Q. Did you, at or about the time Mr. Prickett subscribed to the stock of the Fox River Valley Railroad Company of Wisconsin, or on or about the first of September, 1857, make any statements to him or any other person in his hearing, concerning your subscription to the stock of the Fox River Valley Railroad Company of Illinois?

161 A. Yes, s.r. I told him that I took a subscription, and was a subscriber to that, and had paid in stock. I do not recollect the exact amount now, but I think it was five hundred dollars, ($500.)

17. Q. Did you solicit subscriptions at or about this time, September, 1857, or at any other time, to the stock of the Fox River Valley Railroad Company of this State?

A. Yes, sir. I did.

18. Q. State on whose behalf or whose instance or solicitation you did so?

A. I was solicited by the principal citizens of the village of Richmond.

19. Q. You never was solicited by the company?

A. No, sir.

20. Q. Did you ever act for the company in any capacity?

A. No, sir. What I mean is that I never was paid by the company. I never received a cent. I had my own living, and went around voluntarily at the solicitation of the people, citizens of the village of Richmond.

Cross-examination by Mr. Miller, counsel for defendant:

1. Q. Do you know Mr. Conover?

A. Yes, sir. I had a slight acquaintance with him.

2. Q. Was he ever there at Richmond for the purpose of getting citizens to subscribe for this stock?

A. I suppose that was his object. I do not know. I never knew of his soliciting any subscriptions.

3. Q. Don't you know that he was there for that purpose?

A. I do not know.

4. Q. Don't you know of a meeting being held there?

162 A. Yes, sir.

5. Q. Were you present?

A. No, sir.

6. Q. Don't you know that Mr. Conover was there, as the agent for the railroad company, to get subscriptions for the stock?

A. I supposed he had some interest in the railroad.

7. Q. What made you think so?

A. Because he talked about it, and seemed to be anxious about the road.

8. Q. What else made you think that he was the agent of the railroad company?

A. He seemed to feel an interest in talking about the road.

9. Q. So you did, didn't you?

A. Yes, sir. He was from Milwaukee. He told me that they would take the stock in Milwaukee.

10. Q. He was living in Milwaukee at the time?

A. I supposed so.

11. Q. Did he tell you so?

A. I do not know that he told me so.

12. Q. Didn't he appear there, as the agent of this railroad, to get subscriptions for this stock?

A. I supposed that he was. I did not know him as an agent. I supposed that he was interested in the road. I did not know but he was an officer. I never asked him any questions.

13. Q. Did he have any book to take subscriptions down in?

A. I never saw any.

14. Q. What made you think that he represented the road?

163 A. Because he seemed to feel an interest in the road, and was anxious about getting subscriptions, about having subscriptions taken for the stock.

15. Q. Was he present at this meeting?

A. I do not know.

16. Q. Did you hear him make any representations to any one about the road?

A. I cannot say that I ever heard him make any particular representations. He told me that there was stock taken in Milwaukee, and spoke about the road, the great advantage it would be to our place.

17. Q. Did he request you to get subscriptions to the road?

A. No, sir.

18. Q. Did you say anything to him upon the subject?

A. Yes, sir. He said something to me, and I told him I had taken such and such subscriptions.

19. Q. What subscriptions did you tell him you had taken?

A. I showed him a list.

20. Q. Did you have a book—a subscription-book?

A. Yes, sir.

21. Q. Where did you get that book?

A. I think Mr. Brown gave me the book.

22. Q. Who is he?

A. The merchant there.

23. Q. Where did he get it?

A. I do not know. It was a little, small memorandum-book.

24. Q. The book in which the stock was subscribed?

164 A. I do not know that there was any subscribed at all in it except what I had taken.

25. Q. It was a book furnished you by Mr. Brown?

A. I think Mr. Brown gave it to me.

26. Q. For the purpose of getting subscriptions to the stock of this road?

A. For the purpose of entering the names.

27. Q. How many names did you get?

A. I could not tell.

28. Q. How long were about it, getting what you did?

A. I was a day and a half alone, and I think half a day with Squire McConnel.

29. Q. Did you work any more than that?

A. I went with Mr. Belden half a day. He merely requested me to go with him to see where people lived in the east part of the county.

30. Q. How much more time did you spend?

A. I do not know that any.

31. Q. About three times in all?

A. I think about three times. I cannot tell exactly.

32. Q. Part of the time you was in company with Mr. McConnel, and who' else?

A. I went with Mr. Belden half a day—I think about half a day.
33. Q. Who' else?
A. No one else.
34. Q. Did you tell any of these people that you had taken stock?
A. In the Wisconsin road?
35. Q. In the Fox River Valley Railroad.
A. No, sir; not in the road that I was taking stock for.
36. Q. What did you tell them?
165 A. I told them that I had taken stock in the Fox River Valley Railroad Company; &, as I had taken stock, it was fair for them to take stock to extend the road.
37. Q. As you had subscribed to the stock in Illinois, you thought they ought to subscribe for the stock in Wisconsin?
A. Yes, sir.
38. Q. How much did you subscribe?
A. I think it was not far from $500.
39. Q. Then this Wisconsin road was a continuation of the Illinois road?
A. Yes, sir.
40. Q. Did you know Mr. Parsons?
A. Yes, sir.
41. Q. Was he then trying to get stock?
A. I do not know that he ever made any effort at all to take stock.
42. Q. Where does he live?
A. I do not know.
43. Q. He was there at the time that the people of Richmond were requested to take stock in this road, wasn't he?
A. I never saw Mr. Parsons till what stock was taken was taken.
44. Q. Was he there when the stock was being taken?
A. I do not know that he was.
45. Q. What was he there for?
A. I do not know particularly.
46. Q. Did you ever see him before?
A. No, sir.
47. Q. Have you ever seen him since?
A. Not until to-day.
42. Q. How did you happen to see him then?
166 A. He met me, I think, with Mr. M'Connel.
43. Q. Was there anything passed between you at that time?
A. I do not remember—only the introduction.
44. Q. Was there anything said about the railroad?
A. I cannot say that there was.
45. Q. Was there nothing else said except an introduction?
A. Not between me and Mr. Parsons.
46. Q. In your hearing?
A. There may have been something said about the railroad. I think there was.
47. Q. What makes you think there was?
A. People were interested about it. It was a general subject of conversation.
48. Q. What makes you think he said anything about the railroad—Mr. Parsons?
A. Well, I supposed that he felt an interest in it.
49. Q. How do you know he did?
A. I understood that he was a connection of Mr. Conover.
50. Q. A relative?

A. Yes, sir.
51. Q. How did you understand he was related to him?
A. Some one told me—I believe Mr. Brown—that he was a connection of Mr. Conover.
52. Q. Therefore you supposed that he had some interest in this road. Is that the only reason?
A. I do not know that there was any other reason.
53. Q. Wasn't the thing talked over there at this time between Parsons, Conover, and yourself?
A. No, sir. I recollect the time I was introduced to him. I do
167 not recollect of anything of interest being said about the railroad.
54. Q. When did you next see him?
A. I saw him after that—saw him occasionally for a time after that.
55. Q. Over how long a period of time?
A. I cannot say.
56. Q. Was it two weeks?
A. I cannot tell whether it was one or two.
57. Q. What is your best recollection?
A. It possibly may have been over a week.
58. Q. You saw him at different times during the week that he was there, did you?
A. I saw Mr. Parsons two or three times.
59. Q. That you are sure of?
A. Pretty sure.
60. Q. Did you have any conversation with him about the railroad?
A. Possibly I might.
61. Q. Do you recollect?
A. I do not recollect anything about it. I might possibly have talked with him about the railroad. It was a general topic of conversation.
62. Q. What conversation did you have with him?
A. I cannot tell.
63. Q. You recollect some conversation?
A. Possibly, nothing particular.
64. Q. Wasn't he a resident of that place?
A. No, sir.
65. Q. Where did he live?
A. I do not know.
66. Q. Didn't you ascertain?
A. No, sir.
67. Q. Who else was there in behalf of the railroad?
168 A. Mr. Belden was there.
68. Q. What connection had he in the railroad?
A. I do not know; he was interested in some way.
69. Q. Was he there trying to get stock to be taken?
A. Yes, sir; I think he was anxious to have stock taken.
70. Q. What makes you think so?
A. Because he was there and attended a meeting.
71. Q. Did he make a speech?
A. I think not.
72. Q. Did you attend?
A. No, sir.
73. Q. How do you know what happened?
A. I understood from hearsay.
74. Q. What makes you think he represented the road?
A. My impression was that he was interested at the time of it. I was

told by Mr. Wells that Mr. Belden held some office, director or some other office in the company.

75. Q. He was represented to be a director in the company?

A. Yes, sir; or some officer in the company.

76. Q. You went around with him?

A. Yes, sir; I went with him half a day; he requested me to go and show him where some citizens lived who would take stock.

77. Q. You would not take any more, but you could tell him somebody that would, so you tried to assist him in getting somebody that would take stock?

A. Yes, sir.

169 78. Q. McConnel was a justice of the peace at one time there?

A. Yes, sir.

79. Q. Where did Belden live at that time?

A. I understood he lived at Rochester, Wisconsin.

80. Q. How far is that from Richmond?

A. I think it is about twenty (20) miles. I do not know the exact distance.

81. Q. Do you know whether McConnel subscribed for any of this stock?

A. I do not.

82. Q. Don't know anything about it?

A. I understood he did.

83. Q. Do you know of your own knowledge?

A. I do not.

84. Q. Did you ever tell anybody that he subscribed?

A. I think I did. I think I told several that I understood that Squire McConnel had subscribed, but how much I did not know.

85. Q. Do you know what relation Parsons was to Conover?

A. I do not.

86. Q. What did they say he was; wasn't he a son-in-law?

A. I did not understand that he was a son-in-law.

87. Q. Did you understand that he was in any way related to him?

A. Yes, sir.

88. Q. How?

A. I understood that Parsons was a connection of Conover.

89. Q. You didn't understand how?

170 A. No, sir.

90. Q. Didn't you see Mr. Prickett about subscribing for this stock?

A. Did not.

91. Q. Do you swear to that positively?

A. I am under oath; I feel the responsibility of an oath?

92. Q. Didn't you say anything to him about subscribing for this stock?

A. I will say this: I have seen Mr. Prickett many times since, and never knew that he thought I took the subscription at all.

93. Q. Do you know Ephraim S. Sawyer?

A. I do not know that I ever spoke to him until last Monday morning.

94. Q. Have you seen him before?

A. I have seen him before.

95. Q. Never had any acquaintance with him?

A. Never had any acquaintance with him.

96. Q. Do you know Caleb C. Barnes?

A. I do not.

97. Q. Did you ever see him?

A. I do not remember that I ever saw him.

98. Q. Can you state the names of the persons with whom you did talk for the purpose of inducing them to take stock in this road?

A. I do not know that I can, all the names. It is so long since. I think I can, pretty much every man.

99. Q. Name them?

A. I took of Mr. Maltby Stevens, Alexander Gardner, Mr. William Gardner, and Mr. Preston. I do not know his first name. I took
171 stock of Daniel Dennison. I took stock with Squire McConnel of Daniel Newcomb. I might have taken stock of some others. I do not recollect.

100. Q. You do not recollect the names of any more?

A. I do not.

101. Q. Did you take any more stock than that?

A. Possibly I might. I think I was with Mr. Wells when Mr. Wright's stock was taken; he lived there in the village.

102. Q. Who did you talk with about subscribing for the stock that did not subscribe; can you give the names of all?

A. I do not recollect in particular who I did ask.

103. Q. You can't recollect, can you?

A. I think I asked two Stewarts living there in that town to take stock. I think I asked Mr. Richard Ray; possibly I might have asked some others. I do not recollect now particularly.

104. Q. You cannot mention the names of all that you induced to take stock in the road, nor of all that you asked to take stock in the road, can you?

A. I do not recollect that I enquired of any more. I think I was out but a day and a half.

105. Q. How long was the subject of taking stock in that road before the citizens of Richmond?

A. How long agitated in that place?

106. Q. Yes, sir.

A. I cannot tell.

107. Q. About how long; wasn't it for several months?

A. I think not as long as that.

108. Q. Three or four weeks?

A. Probably for two months, it might have been. I do not know how long.

172 109. Q. Did you not, during all that time, as occasion presented itself, speak to the citizens about taking stock in the road.

A. I think I did; citizens whom I thought would take an interest in taking stock in the road. I probably asked them.

110. Q. Whoever you met that was likely to take stock you asked them to take it?

A. No, sir; not every man. I wish to state that I felt myself a private citizen. I went out but very little from home, and was in the village but very little. I kept myself at home. I went out this time at the solicitation of these men, because I had leisure, and they requested me to go out and take stock. I told them at their request I would go out; it was not at the solicitation of the company; it was at the solicitation of the citizens.

111. Q. The question is, did you not, during these two months, meeting persons that you knew, and whom you thought would be likely to take stock, ask them to do it?

A. I may have asked several. I do not think I said anything for over

three weeks; said nothing to anybody in regard to stock. I dropped it entirely within three weeks; when I was out in going backwards and forwards, I asked, if I met a man whom I thought was interested, I asked him to take stock.

112. Q. Do you mean to say that you did not say anything about it, only the three days you were out?

A. No, sir; I might have said sometimes to men that I cannot now name, something to get them to take stock.

173 113. Q. You felt interested, didn't you?

A. No, sir; not particularly. I had property there, and felt a little interest.

114. Q. Mr. Prickett is a farmer, isn't he?

A. Yes, sir.

115. Q. What is your business?

A. I was formerly upon a farm. I sold my farm, and havn't been in any particular business since.

116. Q. When did you sell it?

A. In 1856. I had some capital invested in that place.

117. Q. In what business?

A. In the carriage business.

(Counsel consent that the depositions may be sent out to be signed by the witnesses.)

(Endorsed:) Filed June 30th, 1870. W. H. Bradley, cl'k.

174 The following deposition of Philo Belden, taken before J. T. Moulton, master, on the tenth day of February, 1870, on the part of the complainant, was filed in said cause on the 30th day of June, 1870, in the words and figures following, to wit:

Dep. of Belden.

PHILO BELDEN, a witness on the part of the complainant, being examined in chief by C. W. Bennett, esq., testified as follows, having been first by me duly cautioned and sworn to testify the truth, the whole truth, & nothing but the truth:

1. Q. Where do you reside?

A. Rochester, Racine County, Wisconsin.

2. Q. Do you know Mr. Sawyer, the complainant?

A. I am acquainted with him.

3. Q. Do you know Henry Prickett, the defendant?

A. I do not know him.

4. Q. Do you know the Fox River Valley Railroad Company of Wisconsin?

A. Yes, sir.

5. Q. Are you its president?

A. I am.

6. Q. How long have you been president?

A. I was elected president in 1855. I held the office till the spring of 1857, when I resigned; and my impresssion now would be, without examination, that I was again elected in 1861, and have held the office ever since.

7. Q. Are you one of the corporators named in the charter?

A. I was one.

175 8. Q. State whether, or not, you were present at the first meeting of the commissioners or corporators.

A. I was present at the first meeting of the commissioners at Mukwonago.

9. Q. Look at the book now open before you—being the minute-book of the corporation—and state whether that meeting is the one referred to at page 41 of the book.

A. That is the meeting. That is a copy of the notice.

10. Q. State, Mr. Belden, who of the corporators was present at that time.

A. Preston Denton, James McKisson, Peter Forbes, Pliny M. Perkins, Richard E. Ely, myself, Philo Belden, Winchell D. Bacon, Vanderpool, I think, William A. & William S. Hawkins, and A. F. Pratt.

11. Q. State where that meeting was held.

A. It was held at the store of Andrew E. Elmore, in the village of Mukwonago.

12. Q. State what the minutes in this book, on page 41 and part of page 42, show.

A. They show a meeting of the commissioners. In the first place is a notice of the meeting; in the next place, a meeting of the commissioners. They show, also, a motion made by myself in the presence of a majority of the commissioners, making Peter Forbes chairman and Winchell D. Bacon secretary, and they show the motion was carried. I then moved that the books now be declared open and subscriptions received, which was put by the president and carried, and books opened.

176 13. Q. Were, or not, all the persons you have named as present at the organization of that meeting present during the proceedings you have now mentioned?

A. They were. I was the last one that went into the store except Mr. Pratt. He stood right behind me, in the door, at the time I made the motion.

14. Q. State what the minutes at page 43 show; being the last two paragraphs with signatures upon that page.

A. That is the certificate of the election of directors by the commissioners who were notified of the meeting after the capital stock was subscribed. There was a resolution introduced—I think by myself—directing the closing of the books, and that the president give notice of a meeting to be held to organize, and give notice of the result.

15. Q. Have you ever seen the other certificate as signed by the persons who originally signed it?

A. I have. I drew it myself and had the signatures attached to it.

16. Q. Is that the certificate of which this is a copy?

A. Yes, sir. I drew that certificate myself at that time, and it was signed at that time by seven of them then in the room, and afterwards signed by two others—by Hawkins and Pratt.

17. Q. Then, to your personal knowledge, each of the persons, commissioners, whose names appear here, actually signed the certificate of election.

A. The seven came right forward and signed it, and the other two, who were residents of the village of Waukesha, some one went and got their signatures.

177 18. Q. What do the minutes show at page 41 and two, with reference to the amount of stock subscribed at the first meeting, and with reference to the amount paid in?

A. They show a subscription, which was actually made at that time, of thirty thousand dollars, 5 per cent. of which was paid in.

19. Q. State whether, or not, the minutes referred to state the fact concerning the subscription to that stock and payment of money upon the stock.

A. The stock was subscribed by individuals there present, all of them, I think, commissioners, except two or three. They all paid their money, or a check upon a bank, with the exception of two or three. I know myself and Ely, who went with me, did not anticipate taking more than ($500) five hundred dollars' worth, and for the balance we gave our promissory notes upon demand; and a short time after that, after the treasurer was elected, he called upon us for the money and we paid it, Mr. Ely and I both together. Smith gave his check for one thousand dollars on the Bank of Elgin. I recollect Mr. Bacon, who took a thousand dollars, paid a fifty-dollar California gold-piece, one of these eight squares—I recollect it from that circumstance.

20. Q. State whether, or not, James C. McKisson, named as one of the corporators, became then a subscriber to the capital stock.

A. He did. My recollection is he subscribed two shares of stock and paid ten dollars. Our books show that payment at that time.

178 21. Q. State what minutes appear on page 159 of the minute-book.

A. A meeting of the executive committee at the office in Milwaukee, June 10th, 1858.

22. Q. State what it shows, if anything, in reference to the transfer of the mortgage in suit.

A. It shows a resolution introduced by Mr. Byer authorizing the transfer of certain mortgages, to the amount of six thousand eight hundred dollars, to C. P. Barnes, for the benefit of certain parties who had given their notes, for the benefit of the company, amounting to ($4,590.09) four thousand five hundred and ninety dollars and nine cents.

23. Q. I refer you to page 160 of the same book. State whether, or not, anything appears upon that page, in the minutes of the board of directors in relation to the action of the executive committee.

A. It shows a meeting of the board August 27, 1858. It shows the minutes of the previous meeting of the board, and also the proceedings of the executive committee were read and approved by the board.

24. Q. Can you tell when Mr. Sawyer was first elected a director of the Fox River Valley Railroad Company, of Wisconsin, from your recollection or from the book?

A. I think I can state from recollection. My impression, without reference to the books, is that he was elected in February, 1855. (Refers to book.) He was elected at a meeting of the stockholders on the 28th February, 1855.

25. Q. How long did he serve?

A. Until the 25th of March, 1857, if I recollect right.

179 26. Q. Did he at any time after, and up to this date, have any official connection with the company?

A. No, sir; not that I ever heard or knew of.

27. Q. Were you familiar with the affairs of this company in the fall of 1857, and through the year 1858?

A. I was. I was a director and have been from its organization up to the present time.

28. Q. State what, if anything, was being done during the fall of 1857 in reference to the construction of the railroad of this company, with particulars as far as you can give them, without going to too great a length.

A. My impression now is that in August or September, of 1857, the entire grading or building of the road was let by contract to William J. Qualey. He done all the work excepting furnishing the iron, or contracted to.

29. Q. What was done in pursuance of that contract?

A. Mr. Qualy, my impression now is, removed between two hundred and fifty and three hundred thousand cubic yards of excavation in the years 1857 and 1858. The grading amounted to something over $50,000—that we paid him; and in addition to that we purchased ties, I could not state how many, a large quantity of ties and timber for culverts, and put in culverts. I should say the culverts we put in on something like twenty-two (22) miles of road.

30. Q. What proportion of the work which has been done on the line of this road was done after September, 1857, as near as you are
180 able to state?

A. Judging from the amount of money I know has been paid, I should say probably six-ninths of it was done after that, somewhere in that vicinity.

31. Q. What assets, if any, did the company accumulate after August or September, 1857, in general terms including farm mortgages, stock subscriptions, and any other funds which they realized for the purpose of carrying on the work?

A. At the same time that these farm mortgages were taken in Illinois, the company obtained also a cash subscription, our subscription-book was a cash subscription, the whole of it, the whole subscriptions were cash subscriptions that have ever been taken, and we gave the privilege to any individual to put a mortgage behind his subscription, and all those who done that they went around and took a mortgage from afterwards. It was at their option. I think of subscriptions obtained in Illinois two-thirds of them perhaps paid these mortgages. I never made a calculation of how much there was received of each kind. There was, I should say, two-thirds of them that parties had paid these mortgages behind their subscriptions, and we also were circulating a cash subscription in Milwaukee, but the amount received I cannot tell.

32. Q. State about the amount as near as you can.

(Objected to on the ground that the subscriptions themselves are the best evidence of the fact to which the witness is testifying.)

181 A. Those original subscription-books, except the Milwaukee subscription-books, were all burned.

33. Q. State, as near as you are able, in round numbers, the amount of subscriptions taken in and after September, 1857, cash and mortgage.

A. At that time that that effort was made, my impression would be, about forty thousand dollars in Illinois and Milwaukee was obtained of cash subscriptions, with the option of securing by mortgage if the party saw fit.

34. Q. Were subscriptions taken subsequently to the time the work was progressing?

A. Not to any considerable extent. I do not now recollect any particular instance.

35. Q. About how much was expended in prosecuting the work upon the company's road after August 1857, in round numbers?

A. I think the expenditures after August, 1857, were about two-thirds of the entire expenditure. The company have expended something over one hundred & fifty thousand dollars, and I think one hundred thousand of it was expended after August, 1857.

36. Q. When was work finally suspended on the line?

A. In the latter part of 1858, or the commencement of 1859; I am not certain which.

37. Q. State whether or not the company has kept up its organization.

A. They have.

38. Q. And whether any efforts have since that time been made or now are making to continue the work and build the road.

A. There were efforts made after I became president. I made an
182 effort in Milwaukee to increase our capital stock, and now there is a bill before the legislature authorizing an increase of our capital stock. I think I made an effort in 1864 to obtain an increase of the capital stock to $208,000.

49. Q. What is the purpose of these efforts?

A. To complete the road.

40. Q. I will call your attention to the paper which I now hand you; state what it is, and whose signature it bears as the maker.

A. It purports to be a transfer of Caleb P. Barnes to Ephrain S. Sawyer of a mortgage therein named; mortgage of Henry Prickett and wife to the Fox River Valley Railroad Company.

41. Q. Whose signature does it bear?

A. That of C. P. Barnes.

42. Q. Is in his hand-writing, isn't it?

A. I should judge it to be.

Cross-examined by Mr. Miller, of counsel for defendant:

1. Q. Turn to your report of January 15th, 1859, Mr. 's report to the stockholders, as president, and state whether it does not appear by that report how much had been expended by the company, and for what purpose.

A. All expenditures up to that time are embraced in these items.

2. Q. There was not anything else expended?

A. There was a good many contracts.

3. Never mind; I want you to answer that question?

A. That embraces all the expenditures, I presume; I would not
183 swear that it did; I did not make it.

4. Q. Does it purport to?

A. Yes, sir; all the expenditures under that head up to that time.

5. Q. I call your attention to page 171 of the book of the company; does'nt this report purport to show all the expenditures by the company up to that time?

A. Yes.

6. Q. How much, from this report, does it appear that the company had expended for the purpose of constructing the road?

A. It amounted to $93,596.26.

7. Q. Wasn't $18,988.30 for salaries of officers?

A. And all other expenses; that includes the purchase of stationary, books, and office-rent; the salare's of officers was a mere nothing.

8. Q. Did you not make, yourself, a report to the stockholders of the company on the 21st of January, 1863?

A. I did.

9. Q. Does it not appear from that report that the actual expenditures of the company up to that time amounted to $94,943.75?

A. Exclusive of discounts; it appears so.

10. Q. What do you mean by discounts?

A. I mean this, that farm mortgages were sold by the company back to the original maker, and there was a discount of twenty per cent.; exclusive of discounts, the report shows the amount of $94,943.75.

10. Q. Didn't that include all the liabilities of the company in-
184 curred for the construction of its road?

A. It shows the amount paid at that time; our contract was then in existence with ; it shows the amount paid at the time of that report.

11. Q. Doesn't the above sum include all the expenditures which the company had made or incurred at that time for the actual construction of the road?

A. No, sir; it does not.

12. Q. What other expenditures were there?

A. We had then in existence a contract on which we were owing the contractor; that shows the amount actually paid at the time of the date of the report.

13. Q. Doesn't this report purport to show the financial condition of the company at that time?

A. That is a very general question. That report shows the expenditures of the company up to that time, the amount of its capital stock, and the amount that had been collected upon capital stock.

FEB'Y 10, 1870—*Afternoon.*

By the WITNESS: There is one point I wish to explain. In my testimony to-day, I stated that this annual report contained the amount of money actually paid out at the time, and not the amount of money actually expended. On each contract there was a reserve of ten per cent. in the hands of the company, for work that had not been paid at the date of them.

14. Q. The report to which reference has been made of January 21st, 1863, was the report of the directors to the stockholders, wasn't it?

185 A. Yes, sir.

15. Q. What was the estimated cost of completing the road at that time, as stated in that report?

A. $485,211.95. That, you will understand, was that division on which the work had been by another company, and that was estimated to complete it. The original cost of the work was two or three times as much.

16. Q. How much money had you then received on stock subscriptions?

A. A little over $100,000, money and mortgages; $100,299.23.

17. Q. In money and mortgages?

A. Yes, sir.

18. Q. How much in money?

A. I could not answer.

19. Q. How much in money has been received on the 15th of January, 1862?

A. The report of the president shows the sum of $39,621.84.

20. Q. Received in money?

A. Yes, sir.

21. Q. How much money has the company collected on farm mortgages?

A. I have no data to tell.

22. Q. About how much?

A. A considereble portion of the mortgages were paid out at par to the contractor.

23. Q. I mean how much the company has collected from the farmers?

A. That the farmers have paid in money?

24. Q. Yes, sir.

186 A. I could not say with any degree of certainty. The company

compromised a good many of them. The company sold to parties at 80 cents on the dollar, quite a number of them, but the greater portion of them were paid out to the contractor. He took half mortgages.

25. Q. How many farm mortgages were taken?

A. $59,000.

26. Q. Did you have anything to do with procuring stock at Richmond—mortgages?

A. I did not have anything to do with procuring mortgages.

27. Q. Stock, then?

A. I attended meetings at two different villages there. I went down there for the purpose of getting aid. I attended a meeting at Richmond and at Ringwood.

28. Q. Did you make a speech at Richmond?

A. In my style.

29. Q. You did make a speech there, did you?

A. I talked upon this subject of this railroad.

30. Q. Any one else with you?

A. Yes, sir; James Neeley and S. S. Connover, of Milwaukee.

31. Q. Had you and Mr. Connover been appointed agents for procuring stock?

A. My impression is that we were.

32. Q. Did you get anybody at Richmond to help you?

A. At the meeting—my impression is this, that they appointed a committee there for the purpose of soliciting subscriptions. I left there and went to Ringwood, another village lower down.

33. Q. Aside from these farm mortgages, how much stock has been subscribed for by parties who are able to pay and which still remain unpaid?

187 WITNESS. A. At this date unpaid?

COUNSEL. 34. Q. Yes, sir.

A. I could not answer that with any degree of certainty.

35. Q. Well, as near as you can.

A. I could not answer that question with any certainty. I have in my mind a number of parties who subscribed from one to three thousand dollars, who are worthless.

36. Q. Answer it to the best of your ability.

A. I should say not to exceed twenty thousand dollars old, original subscriptions now standing upon our books, unpaid subscriptions, made at or prior to 1854.

37. Q. Not more than twenty thousand dollars?

A. I should say not, that was good and unpaid, of that class of subscriptions made prior to 1858.

38. Q. In your judgment, about $20,000?

A. I should not think to exceed that, of good subscriptions, available.

39. Q. Of that old subscription?

A. Yes, sir.

40. Q. That is now good?

A. Yes, sir.

41. Q. Who was president of the company in 1857?

A. I think Mr. Connover, from some time in the spring of 1857. Prior to that time Mr. Forbes. From some time in the spring of 1857, my impressions are, Mr. Connover.

42. Q. Did you not, on the 23rd day of January, 1857, give a verbal report to the directors of the financial condition of the company?

A. It would appear that I did.

188 43. Q. Isn't it so in the record of the meeting?

A. Yes, sir, it is. It was reduced to writing and probably printed.

44. Q. Wasn't the treasurer of the company, at the same meeting, instructed to pay up the outstanding liabilities of the company on the notes of the board of directors standing on the account of bills payable, as fast as possible, from any available means in the treasury?

A. Yes, sir; I think he was.

45. Q. That was at the same meeting at which you made this report, was it?

A. Yes, sir.

(Close of cross-ex.)

(Re-direct examination of Philo Belden by Mr. Bennett, counsel for complainant.)

Q. I will ask you whether those notes referred to in the proceedings of January 23, 1857, were or not, part of them, or any of them, the notes of Mr. Sawyer and others, in payment of which these mortgages were turned out?

A. They were. Those were a part of the liabilities of the company at that time.

Q. I will ask you whether those notes, in payment of which the mortgages were turned out, had ever been paid, until the mortgages were turned out?

A. We were doing work at that time by contract; and monthly, whenever our estimates were greater than the amount of money
189 we were likely to receive, I stated that to the board and these men went out and borrowed the money upon their own responsibility.

Q. So with the notes mentioned on page 159 of the minute book, they were outstanding and unpaid at the time these mortgages were turned out?

A. Yes, sir.

Q. Do you know a man named John Woodell, in the town of Richmond?

A. I do not.

Q. Had your company a stockholder of that name?

A. Not that I know of.

Q. Had they a stockholder by the name of Woodell?

A. There was a stockholder named Peter C. Woodell—not John.

Signature of witness waived as per stipulation on file.

[SEAL.] J. T. MOULTON,

Master in Chancery, U. S. Cir. Court N. Dist. of Illinois.

[Stamp.]

(Endorsed:) Filed June 30, 1870. W. H. Bradley, cl'k.

190 The bond on appeal in said-entitled cause is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents, that we, Ephraim S. Sawyer, of Burlington, Racine County, Wisconsin, as principal, and Caleb J. True and Julius Wooster, of Chicago, Illinois, as *trustees*, are held and firmly bound unto Henry Prickett, of McHenry County, Illinois, in the

sum of two hundred and fifty dollars, to be paid to the said Henry Prickett, his executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and sev'rally, firmly by these presents, dated this 19th day of November, in the year eighteen hundred and seventy.

Whereas the above bounden Ephraim S. Sawyer has appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the northern district of Illinois, bearing date the 29th day of July, A. D. 1870, in a cause in equity, in which the said Ephraim S. Sawyer was complainant, and the said Henry Prickett and Charlotte Prickett, his wife, were defendants:

Now, therefore, the condition of this obligation is such that, if the above-named appellant, Ephraim S. Sawyer, shall prosecute his
191 appeal with effect, and pay all such costs and expenses as shall be awarded against him as such appellant therein, then this obligation to be void; otherwise to remain in full force and effect.

E. S. SAWYER. [SEAL.]
C. J. TRUE. [SEAL.]
JULIUS WOOSTER. [SEAL.]

Sealed and delivered in presence of—
Approved.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Jan'y 19, 1871. W'm H. Bradley, cl'k.

192 And afterwards, to wit, on the 27th day of June, A. D. 1872, in the record of the proceedings of said court in said cause, appear the following entries, to wit:

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT AND CHARLOTTE PRICKETT. } In chancery.

On the stipulation this day filed and signed by the above-named parties, by their solicitors—

It is ordered that the copies of record-entries attached to said stipulation be, and the same hereby are, entered of record in said cause in place of the original record-entries destroyed by the fire of October 9th, 1871, and be substituted for said original record-entries, of which they are substantial copies, and that they take effect from the date respectively of said original docket-entries, as mentioned in said copies.

(Endorsed:) Thursday, June 27, '72.

193 The stipulation and record-entries referred to in said last above recited entry are in the words and figures following, to wit:

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT AND CHARLOTTE PRICKETT. } In chancery.

It is stipulated that the annexed copies of record-entries in the above-

entitled action may be entered of record in said cause, in place of the original docket-entries destroyed by the fire of October 9th, 1871.

Dated June 26th, 1872.

MILLER, FROST & LEWIS,
Def'ts' Sol'rs.
BENNETT & ULLMAN,
Compl't's Sol'rs.

194 *Order of record.*

NOVEMBER 1ST, 1869.

Present, Hon. Thomas Drummond, judge.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT & CHARLOTTE PRICKETT. } Chancery.

On motion of the complainant's solicitors, and with the consent of the defendants' solicitors, it is ordered by the court, that it be referred to J. T. Moulton, esqr., one of the masters of this court, in pursuance of a stipulation filed, to take proofs and report the same to the court.

Order setting case for hearing.

JUNE 4TH, 1870.

Present, Hon. Henry W. Blodgett, judge.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT & CHARLOTTE PRICKETT. } Chancery.

Now come the parties, by their solicitors, and by agreement this cause is set down for hearing on the bill, answer, replication, proofs, and exhibits filed, and the court, after hearing the pleadings and proofs, together with the arguments of the solicitors for the respective parties, not being now sufficiently advised in the premises takes time to consider.

195 *Order of dismissal, &c.*

JULY 29TH, 1870.

Present, Hon. Henry W. Blodgett, judge.

EPHRAIM S. SAWYER
vs.
HENRY PRICKETT & CHARLOTTE PRICKETT. } Chancery.

Now come the parties, by their respective solicitors, and the court having considered and being now fully advised upon the matters heretofore submitted herein, orders that the bill of complaint be dismissed at the costs of the complainant, and that the defendants have and recover of the complainant their costs and charges by them about their defense in this behalf expended, amounting to the sum of one hundred fifty-eight dollars and sixty cents, and that they have execution therefor; and thereupon the complainant prays an appeal to the Supreme Court

of the United States, which is granted, upon condition that he enter into bond in the penal sum of two hundred & fifty dollars, with security to be approved by the court.

(Endorsed:) Filed June 27, 1872. W'm H. Bradley, cl'k.

196 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in the said-entitled cause in said court, wherein Ephraim S. Sawyer is complainant and Henry Prickett and Charlotte Prickett are defendants, as appears from the records of said court remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Chicago, in said district, this thirteenth day of July, A. D. eighteen hundred and seventy-two, and of our Independence the ninety-sixth year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

[5-ct. int.-rev. stamp, canceled.]

(Indorsement on cover:) No. 399. Ephraim S. Sawyer, appellant, vs. Henry Prickett and Charlotte Prickett. N. Illinois C. C. U. S. Filed 18th July, 1872.

Supreme Court of the United States.

October Term, 1873.—No. 184.

EPHRAIM S. SAWYER, APPELLANT,

vs.

HENRY PRICKET and CHARLOTTE PRICKET, his wife,

RESPONDENTS.

BRIEF FOR APPELLANT.

MATT. H. CARPENTER,

Of Counsel.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1873.

EPHRAIM S. SAWYER, Appellant,

vs.

HENRY PRICKETT AND CHARLOTTE PRICKETT, HIS WIFE, Respondents.

No. 184.

ASSIGNMENT OF ERRORS.

I.

The court below erred in dismissing the bill of complaint.

ABSTRACT.

We submit in separate pamphlet an abstract of the case and of all the testimony material to the case.

BRIEF.

This suit was commenced by Sawyer in the Circuit Court of the United States for the Northern District of Illinois, to foreclose a mortgage given by the defendants to secure a note of $2,000 given by the defendant, Henry Prickett, to the Fox River Valley Railroad Company, a Wisconsin corporation. The mortgage was dated with the note, September 1, 1857. The note was payable in ten years from its date, and was given in payment of a subscription for $2,000 of the capital stock of said railroad company; the note and mortgage having been assigned to the complainant, Sawyer, before its maturity, for value, and in due course of business.

The court below dismissed the bill, and the complainant appeals.

Before considering the principal issues made by the pleadings, it is proper to notice an allegation of the answer, that the premises were, at the time of the execution of the mortgage, the defendant's homestead.

This allegation of the answer is wholly disproved by the testimony in the case. But had the proof sustained it, it would (under the Illinois statute) have constituted no defense to the suit. The decree would have been for a foreclosure of the mortgage and a sale of the premises, subject to the defendant's homestead interest to the amount of $1,000.

The defendant himself testified that the premises were occupied by himself as a residence, and had been for twenty years, (page 13, printed Record.) But on cross-examination, (page 16, printed Record,) he said that the buildings were not when the mortgage was executed, and were not at the time he testified, on the mortgage premises, but on another part of the three hundred and sixty acres which he owned. Mr. Parsons testified (page 72, printed Record,) that the mortgage did not cover the defendant's home.

The pleadings create three issues of fact, which we shall consider in the order in which they are raised.

I.

The defendants deny that the complainant was a *bona fide* holder and assignee of the note and mortgage, but charge that he was one of the managers, officers, or agents of the railroad company at the time the note and mortgage were given, and that, if he ever became the assignee thereof, it was with knowledge that their execution had been procured by fraudulent representations, and without consideration.

The answer is not verified, and there is not only no tesmony to sustain this averment of the answer, but it is completely disproved.

The introduction of the note, mortgage, and assignments in evidence made a *prima facie* case for the complainant, and cast upon the defendants the burden of proof. To overcome this no competent testimony was offered. There

is nothing but hearsay testimony that Sawyer was a director of the road or took the mortgage, as alleged in the answer. The complainant was under no obligation to offer any proof upon this point, but did prove conclusively that he was a *bona fide* holder and owner.

See Abstract herewith, pp. 4, 5, 6.

It is well settled that a subscription to the stock of a corporation is a consideration sufficient to support a promise.

II.

The defendants deny the existence of the railroad company as a corporation.

It is well settled that a person who has dealt with a corporation cannot, when sued upon his contract, change the action from assumpsit to *quo warranto*. The defendants, by giving the note and mortgage, are estopped to deny the legal existence of the corporation.

Angell & Ames on Corporations, pp. 636, 637, 638, 640, *and cases there cited.*

Also, *Anderson* v. *R. R. Co.*, 12 *Ind.*, 376.

The testimony also shows complete organization of the company, and its existence as a corporation when the note and mortgage were given; and that the company had expended over one hundred thousand dollars in the construction of its road. (See *Abstract*, pp. 6, 7.)

III.

The defendants allege that the note and mortgage were obtained by fraudulent representations, and without valuable consideration.

Representations, to be fraudulent, must relate to existing facts. Predictions are matter of opinion, as to which one party is as competent to judge as the other.

Most of the statements which Prickett claims to be fraudulent representations were matters of opinion given by citizens of Richmond, not agents of the railroad company or

in its employ. The complainant objected to all testimony of statements made at public meetings at which Prickett was not present—to statements made to persons other than Prickett—and to statements made to Prickett by persons, other than agents of the company. Nearly all the statements will be found to fall within one or the other of these objections. We are unable to find, from the testimony, a single material representation to Prickett to induce him to subscribe, made by any agent or officer of the company.

The representations sworn to are all mere matters of opinion as to the probable increase in value of the defendant's property in case the railroad should be built, and of various matters of that kind, none of which were representations as to an *existing fact* or state of facts.

Walker *v.* Mobile and Ohio R. R., 34 Miss., 245; 12 Ind., 376.

This would be so, even if these representations had been made by the agents of the company. How much stronger a case it is for the appellant when it appears that they came from citizens of Richmond appointed at a meeting of citizens to obtain subscriptions.

To avoid a subscription on the ground of fraud, it must appear that some material statement or representation was made upon which reliance was placed, and upon the faith of which the subscription was made.

Nearly all the testimony offered on the part of the defendants was as to representations made to third persons not in the presence or hearing of Prickett, and it nowhere appears that he had knowledge of such representations or statement before he made the subscription.

The depositions of Gardner, Andrews, Imerson, Gibbs, Stevens, Potter, McClellan, and Burroughs, all related to conversations between themselves and third persons, at or about the time they subscribed to the stock, not in the presence of Prickett, not made to him, and not brought to his knowledge before he subscribed, as far as appears from the testimony in the case.

MATT. H. CARPENTER,
Of Counsel for Appellant.

Supreme Court of the United States

EPHRAIM S. SAWYER

vs.

HENRY and CHARLOTTE PRICKETT.

ABSTRACT.

A. C. SANDFORD, Steam Printer and Bookbinder, Racine, Wis.

Supreme Court of the United States.

EPHRIAM S. SAWYER,

vs.

HENRY PRICKETT, and
CHARLOTTE PRICKETT.

This action was commenced in the Circuit Court of the United States for the Northern District of Illinois, to foreclose a mortgage for $2,000, made by the defendants to the Fox River Valley Railroad Company, on September 1, 1857, due in ten years from date, to secure the payment of the promissory note of said Henry Prickett for said sum, given in payment of his subscription to the capital stock of said Company for two thousand dollars; which mortgage and the note accompanying the same were sold, assigned and transferred to the complainant on the 6th day of March, 1861, for a valuable consideration. The bill of complaint is in the usual form.

The defendants answered:

First. Denying that the complainant was a *bona fide* holder and assignee of the note and mortgage.

Second. That the Fox River Valley Railroad Company was never incorporated, and never has constructed its road or any part thereof.

Third. That the note and mortgage were obtained by fraud and without any valuable consideration given therefor.

Upon the pleadings and proofs under these issues the Circuit Court dismissed the bill, and the complainant has appealed to this court.

The complainant offered in evidence before the master, the note, mortgage, assignment thereof by the Railroad Company to Caleb P. Barns, and the assignment by Barns to the complainant.

Exhibits 1, 2, 3, 4; pages 39 to 43 of Record.

This evidence, with the admission in the defendant's answer, of the execution of the note and mortgage, made a *prima facie* case in favor of the complainant.

The defendants having presented the issues above enumerated, and having assumed the burden, entered upon their proof.

I.

It was stipulated before the master that objections meight be made to the testimony at the hearing of the same as if made before the master (page 22, fol. 52, Record). At the hearing the complainant objected to all testimony offered by defendant of representations made by any person or persons other than agents of the company, or made to any persons other than the defendants or one of them, and to all testimony of statements made at public meetings at which the defendants were not present (page 12 of Record, fol. 29).

The defendants aver that the "Complainant is not a *bona fide* assignee and holder of said note and mortgage," but charge that the "Complainant was one of the managers, officers or agents of said company at the time said note and mortgage were given, or if he even became the assignee of said note and mortgage he well knew that the same were procured by fraudulent representations and without any consideration therefor."

We search the record in vain for any competent proof made by the defendants upon this issue.

On the other hand the complainant has fully shown the *bona fides* of his ownership of these securities.

It appears that the complainant with some five or six others signed notes and raised money for the Railroad Company to the amount of several thousand dollars; that these persons employed C. P. Barns to obtain security from the Company for the money so borrowed and advanced; that Barns procured the note and mortgage in suit (and several others,) and the complainant paid $1,000 and assessments amounting to between $400 and $600 to Barns on these notes given to raise money for the Company and took an assignment of the note and mortgage in suit.

(Page 30 to 35 of printed Record.)

That he was elected a director of said Company in 1855 and held the office till March, 1857, at which time he resigned and never had any connection afterwards with the Company in any capacity, except as a subscriber to the capital stock for $5,000, which he paid.

(Page 35 to 39 of printed Record.)

Peter Forbes testified that Mr. Bond, Mr. Ely, Mr. Belden, Mr. Perkins, Mr. Sawyer and witness endorsed paper for the Railroad Company and gave their individual notes for money for the use of the Company, which notes were held by outside parties and were not paid by the Company; that the persons above named employed Barns to obtain security from the Company to indemnify them from the payment of said notes; that Barns obtained the note and mortgage in suit (with others); that Sawyer paid the money on the individual note and took an assignment of the note and mortgage in suit, and that Sawyer was not an officer of the Company at the time the note and mortgage were executed, and had no connection with the Company except as a stockholder.

That he took stock to the amount of $5,000 and paid it.
(Page 55 to 68 of printed Record.)

Belden, the President of the Company, testified that Sawyer was a director of the Company from Feb. 28, 1855, to March 25, 1857; that the record or minute book shows a resolution of the board of directors authorizing the transfer of certain mortgages to the amount of $6,800 to C. P. Barns for the benefit of certain persons who had given their notes for the use of the Company These notes were signed by Sawyer and others.

That the money raised on these notes was used by the Company in grading its road.

(Page 83 to 88 of Record.)

II.

The defendents alleged that the Fox River Valley Railroad Company was never incorporated, and never has constructed its road or any part thereof.

The defendants' testimony on this issue is furnished by J. C Kessor who testified to the different attempts to organize the Company and that the road was never completed. He testified that there were at the beginning two sets of directors, each claiming to represent the corporatoin, but that in 1856 one of the organizations purchased the road of the other.

(Page 27 of Record.)

Mr. Belden and Mr. Forbes (for the complainant) testify to the subscriptions to stock, and to the complete organization of the company under its charter.

Forbes testimony is at pages 55 to 68.

Belden's testimony is at 81 to 88.

Mr. Belden testified to the organization of the company under its charter; was elected President in 1855; held the

office till 1857; was again elected in 1861 and still held the office; that the entire grading or building of the railroad was let by contract to William J. Qualey. He (Qualey) did all the work, except furnishing the iron, or contracted to. His impression was that Qualey removed between 250 and 300 thousand cubic yards of excavation in the years 1857 and 1858. The grading amounted to something over $50,000; that they paid him. In addition to that we purchased ties—a large quantity of ties and timber for culverts, and put in culverts. He thought the culverts were put in about twenty-two miles of road. He judged from the amount of money paid out that probably six ninths of the work was done after September 1, 1857. The Company have expended something over $150,000, and he thought $100,000 of it was expended after August, 1857.

(Page 84 of Record.)

The organization of the Company had been kept up and a bill was then before the legislature providing an increase of the capital stock.

(Pages 84 and 85 of Record.)

III

The defendants set up that the note ad mortgage were obtained by the fraudulent representations of the agents of the Railroad Company, and without any valuable consideration.

As to the question of consideration the defendant, Henry Prickett, testified that the note and mortgage were given in payment of his subscription of $2,000 to the capital stock of the Railroad Company; that he received a certificate entitling him to the stock; that the Railroad Company guaranteed the payment of the interest on the mortgage, but that he (the defendant) stipulated that the guarantee should be no defense to an action on the note and mortgage in the

hands of a third party, and introduced in evidence a written agreement between himself and the Railroad Company to that effect.

(Exhibit A, page 17, and pages 13 to 17 of Record.)

To establish fraud, the defendant Henry Prickett testified:

The first that I saw of Conover was in the village of Richmond. Conover and a number of citizens were together; they thought the property would be enhanced by having a railroad; they come to me and wanted me to subscribe; I told them I would not have anything to do with it, the first time that they came to me. Afterwards I did sign the subscription-list, and they represented to me that I should never have anything to pay; that they would pay the interest and that the dividends upon the road would pay the principal; that at the time mortgage ran out I should be ahead. A short time after that they came to my house, Mr. Parsons with the 'squire to acknowledge the mortgage, and my wife held out about signing it a half an hour, I should think. They talked to her and told her it would be an everlasting benefit to her to sign it, and that the railroad would probably make thirty per cent. and it would give her and her family six hundred dollars a year always. Mr. Sibley and this Conover were the two principal agents in getting subsciptions, and when they came to get the mortgage this Mr. Parsons came with the 'squire, in order to induce us farmers to subscribe to the subscription-list. They got William A. McConnel, a leading citizen to sign fifteen hundred dollars, with the agreement that they would take out a thousand and leave him only five hundred to pay; and likewise John Wodell, if he would subscribe one thousand dollars they would hold him only for five hundred dollars, in order to get others to sign. They told me that there would never be anything to pay; that I have stated.

They likewise told me that a railroad from Milwaukee

to Richmond would enhance the value of property and produce would bring a better price in Milwaukee than in Chicago

They represented that the road would be a good thing; that it would bring us a better price for our produce, enhance the value of our property, and that we should never have anything to pay for it—the dividends would pay the interest and they would pay the principal; they held meetings and got up a great excitement. The influence was principally exerted by some of our own citizens—William A. McConnel and Mr. Sibley, and some others in whom we had the utmost confidence. We thought that if they took stock we could take it too.

13. Int. You were to pay in some way; how was it?

A. To give a mortgage upon my farm; they said, likewise that if I did not draw the dividends that the dividends of the road would pay the mortgage; they were never going to call upon me for anything.

Mr. Conovor, represented to be president of the company, and Mr. Sibley, a resident of Richmond, a citizen in whom we placed the utmost confidence. He said he had mortgaged his house and lot and it would be a good thing; induced me in every way to sign, and others, it is not necessary to mention their names. Dr. Stone and Dr. Bennett and some others.

20. Int. Did you attend any of the meetings held for the purpose of obtaining subscription?

A. No, sir.

29. Int. Would you have become a subscriber to the capital stock of this company except from the fact that William McConnel became a subscriber thereto, and the other parties you have named?

A. If they had not represented as they did, and if McConnel and other leading citizens of the town had not subscribed, I certainly should not: but the representation was an inducement to make farmers subscribe, "See here,

you put in six thousand dollars and you get six hundred for life. Is not that enough?"

8. C. int. You say in your direct examination they got William A. McConnel, a leading citizen, to sign fifteen hundred dollars, with the agreement that they would take out a thousand and leave him only five hundred to pay. Do you know that personally, or is it simply hearsay?

A. That is what I understood from others. I saw his name on the list but I could not positively say for how much; I think it was for a thousand dollars, If my memory serves me right—it is twelve years ago—and I won't say positively.

9. C. int. You stated in your direct examination that they likewise agreed with John Wodell that if he would subscribe one thousand dollars they would let him off for five hundred dollars in order to get others to sign. Do you know that of your own knowledge, or is it simply hearsay?

A. That is as I understood it.

11. C. int. You say in your direct examination "The influence was principally exerted by some of our own citizens, William A. McConnel, Mr. Sibley, and some others in whom we had the utmost confidence." Do you mean by that, that you were influenced by Mr. McConnel and Mr. Sibley to subscribe for his stock?

A. By Mr. Sibley, more particularly. He pictured it out so nice to me that he had a great influence on me to take stock.

The stock was solicited by Conover & Sibley. Conover represented himself as one of the directors and agent of the road in soliciting stock; do not know as Sibley was an agent or had a stockbook, and did not know as Sibly solicited any stock.

Question by counsel for defendants. Under what condition did you take this stock?

A. First, Mr. Conover told me if I would subscribe there would be no interest to pay; they would pay the interest upon the mortgage, and that the dividends upon the road would pay the principal before the time was up. Conover said the rolling-stock should be on in 18 months. This was in August, 1857. The road has not been built. The mortgage was given under the representations of Conover, as stated above.

Alexander Gardner testified:

They done it in this manner. They set forth the great benefit and facilities the community would derive from the road being built; it would open a connection with the Milwaukee market; that the Milwaukee market was better than Chicago; that Milwaukee wheat sold at an advanced price above the Chicago market; that opening this road to Milwaukee would cause farmers to reap the benefit of five cents a bushel upon their wheat. They likewise set forth that it was going to be a good investment for a farmer to make; that if they would take stock in the road they could take it by giving a mortgage running ten years at eight per cent. interest, payable annually, and the company was willing to pay the interest, the person giving a mortgage would not be called upon for the interest; then they said that if the parties giving the mortgage should let the dividends of the road remain in the company's hand, at the expiration or before, the dividends would pay off the stock and perhaps more, and they would have the stock clear in ten years. They held out these inducements.

They held meetings, made speeches, and represented the great benefit that it would be to the farming community, raising the value of real estate, giving them a better market in Milwaukee than they had in Chicago, and that it would bring them in quite a revenue from the dividends. They represented that it would be a good paying road.

I subscribed under certain conditions. I did not consider it subscribing. It was represented to me like this: that where a party agreed to give a mortgage running ten years there was no contract until the mortgages were executed and signed. This man Sibley was a man that the citizens had confidence in. He came to me and I told him I was ignorant in regard to railroad matters. He said that he had mortgaged his house and lot in Richmond for as much as they would take; it was worth one thousand dollars, and they took it for five hundred. He represented that if I would take the stock it would be good paying property to me, raise the value of my farm, and give me a better market. I proposed taking three hundred dollars worth; said he, "You had better take five hundred, that would make you a voter and give you a voice." He staid there a long while with me, two or three hours, eat dinner, and while we were at the dinner-table, I told him I might take five hundred dollars stock in the road, and, said I, Mr. Sibley, before I give you a mortgage, I want to inform myself more upon this matter. A little previous to this he handed me a small book, which I supposed to be nothing more than a memorandum book, and I wrote my name on that with a pencil for the amount of five hundred dollars. He wrote above my name; I supposed it was merely a memorandum. When they had the meeting at Richmond they invited me to come up there. I made up my mind I would not attend the meeting. I took some pains to inform myself, and made up my mind not to take any stock, as the whole thing, I thought, was a swindle. A short time afterwards this man Parsons came around to my place with Dr. Bennett, who was a justice of the peace, and Dr. Stone. I think, on reflection, that 'squire Bennett did not come at that time, but Dr. Stone and Parsons did. Parsons demanded a mortgage. I told him I had not agreed to take any mortgage stock; that I did propose taking stock to the amount of five hundred dollars, providing everything was all right.

"Why," said he, "you have got your name upon the book here for five hundred dollars, and if you refuse to give a mortgage we will collect the cash subscription of you. The road will be built this year, and if you do not give a mortgage you will have to pay cash subscription within a year." I said there was no contract presented to me; "I knew nothing about any contract." Said he, "we have got your name to a cash subscription contract." Said I, "If my name is attached to a cash-subscription contract I did not know it." He insisted on my giving a mortgage, and I told him I did not make a contract to give any mortgage. He left at that time and a short time afterwards Mr. Conover came, and he and Dr. Stone and 'Squire Bennett, justice of the peace, demanded a mortgage. I told them I had not agreed to give any mortgage. They said they had got my name upon the cash subscription list, and I might hand over if I would not give a mortgage. Upon that I told them if they got one hundred dollars out of me within a year they would know it They said they had got my name to the cash-subscription contract, and were going to put me through upon it. I went and looked up the book and told them if they had got my name upon the book for a cash-subscription contract I wanted to know it. Mr. Brown produced the book, and I found that upon turning over several leaves I came to my name; that was the way they claimed that my name was attached to that cash-subscription contract. I had supposed that was a memorandum of Mr. Sibley's. Afterwards they brought suit against me—sued me on a cash-subscription contract, and in order to make their suit stick, as they found they had commenced wrong, they took and erased two words and inserted others. Erased the words "by mortgage," and gets this man Parsons to come into court and say that I had changed that to a cash-subscription contract. There was no such change ever made as they testified to.

15. Int. Do you know upon what arrangement with the

company he subscribed; and, if so, what arrangement? And how did you become possessed of that information?

A. I talked with Mr. McConnel himself in regard to this subscription. I asked him how much stock he had taken in the road. I think he said he had taken five hundred dollars. I said "Does not your name stand upon the books for a thousand or fifteen hundred dollars or double the amount he claimed he had taken in the road?" I said, "Why does your name stand there upon the subscription-list for that amount when you have only taken five hundred dollars?" He answered by saying that he put that amount there at the company's request. I asked him, then, what was the object of the company's putting that amount there when he had only taken five hundred dollars. He said he did not know He went away, and did not wish to talk any more about it.

They represented that the road would be built within a year; that, at that time, there was some twelve miles of the road, I think, graded from Milwaukee out, and that within a short time there would be twelve miles completed, and there would be a dividend coming from that part of the road; if we did not want to take the dividend it would be applied upon our subscriptions.

George Andrews testified:

I do not know whether I ever subscribed or not. I gave a mortgage for ten shares. I do not recollect that I put my name down myself. I think they did that for me.

3. Int. State all the circumstances connected with the matter.

A. Why I was induced to do it was because Mr. McConnel and Mr. Sibley were men that we placed great confidence in. McConnel was a pretty close kind of a man. We considered him a leading citizen and about right, and that he would not advise us to do anything wrong. His name

was on the books for a large amount, and it was in everybody's mouth to have the competing line. Our grain would bring a better price, and if we would mortgage our property we never would have to pay it, and they would see me free from all harm. I did not like to give a mortgage. I wanted something to show for it if I did. He had a book with blanks in it, and said that was the form in which they drew up all the rest of them. This was the stock agent, at the time he came round; that we never would be called upon for principal or interest; that they were going to build the road right away, and that it would be paying right along. They represented to my wife that if I should be taken away, or anything happen to me, it would be the means of helping her. It was through McConnel and Sibley that I gave the mortgage. My wife did not want to sign it. I had every confidence in Sibley, and thought he would not advise me to do anything that was wrong. That is why I took stock in it. It was in every one's mouth—there was such an excitement got up. Our wheat was going to fetch more in having the road, which was going to be built right away, as Milwaukee wheat was worth a great deal more than wheat taken to Chicago. It would be a great benefit to the country and to us all. I did not want to give the mortgage at the time the stock-agent came for it. He said that my name was upon the books, and he said it would be just as good as a mortgage.

4. Int. What was the station and standing in the community, at this time, for business integrity, of William A. McConnel?

A. He was considered one of our leading men. We all looked up to him. He was the supervisor and a good financier. We all respected him, and thought whatever he said was right; and they were all willing to do as he said, and fall in with what he said, and so with Sibley; every one had every confidence in him, that he would not do anything that

was wrong, and that he would not lead the subscribers into any trouble.

Jonathan Imeson testified:

In the first place we had a meeting at Richmond; some men from Milwaukee were there; there was quite an excitement then in town; it was all railroad. They got up in the hall and kept the meeting up most all the afternoon. It was stated there that they had come to get some help from us to run a branch from Milwaukee to Richmond. They did not want any help to build the road down to their state line. They wanted help to build the road from the state line to Richmond. That was all they asked us to do. They had money enough in their possession to build the road from Milwaukee to the state line. They were to put part of the rolling stock on. They had got nine or ten miles that would soon be ready for operation, and when it was they would be earning something that would pay expenses right away, and they wanted to get mortgages out there, and they wanted to get them in this way: they wanted us to give mortgages in a shape that they could borrow money on them. They did not want to take them away and sell them but to hold them to borrow money on—and the road to be in running order. It would be finished in from 1 to 2 years; 2 years at farthest. After the meeting—a few days after the meeting—this Mr. Sibley came along, and another director from Rochester; I I have forgotten his name. He was well acquainted with me, and said he: "I want you to take some stock in this road." Said I, "I want nothing to do with it; I can neither read nor write very well, and I want nothing to do with it." "But," says he, "you don't know what is best for you. I have got a house and lot in Richmond, and I have put it in for what they will take it for; and," says he, "it is a good deal more benefit to you than it is to me, for you are a farmer; and," he said, "the Milwaukee market is a great deal better than

Chicago, and your wheat will bring for you five cents more a bushel in Milwaukee than it will in Chicago; and," said he, "you must take some stock anyhow." I told him I would not take any stock. He stopped and got dinner, and before he went away I partially promised to take some stock; and he went away with a partial promise from me to take some stock; and in a week or two Mr. Bennett and Mr. Parsons came around. Mr. Bennett was the 'squire and he went on and explained the thing to me, and got me to thinking that it was going to be a grand thing and a money-making thing. I finally agreed to take one thousand dollars. Mr. Bennett told me, said he, "You will have nothing to pay." Said he, "You sign for this, and by the time, in seven or eight years, it will be paid up, the whole thing, and the company will pay the interest right along, and you will have nothing to pay, and by signing this you will be making money the whole time." I told him I did not understand anything about it.

Herman Gibbs testified:

Was a director in the Fox River Valley Railroad; knows nothing of the taking of the Prickett mortgage. Barns & McKisson solicited and took mortgages for the company. Conover was the principal agent here for soliciting stock for this road. was director of the road for some time; that E. S. Sawyer was director; know of Sibley soliciting stock for the company, sometimes with Conover and sometimes alone. Heard Sibley say he had taken stock in the road to the amount of five hundred dollars, and had no land; that is my impression.

D. A. Potter testified:

Conover was in the corner store of Wodell & Potter, in Richmond. Peter Wodell, Peter Whitney, and witness were present. Conover urged Wodell and Whitney to take stock and they thought they could take only $500 each

and Whitney went out to the store, and Conover said to Wodell, I want you to take $1,000; for Whitney and others won't take any more than you, as you are merchant here, and if you will subscribe $1,000, when you give the mortgage, I, Conover, agree that it shall be made for $500; and the mortgage was made for $500. Knows of John Sibley soliciting stock for the company; does not know whether he was employed by the company or not; Sibley solicited me to take stock in this company.

Sibley said he had taken stock in this company, and it would advance the value of his property, and that as I was in business here I ought to take stock as it would help my business and business in town. About the same time in Wodell & Potter's store, Conover solicited W. A. McConnel to take stock in the road; Conover and McConnel went into the back room and after being there a short time came out, and W. A. McConnel went to the desk and subscribed three thousand dollars in stock on a subscription list or book that Conover had; from my best recollection, was a partner of Wodell at the time; from personal knowledge knows of no stock being taken afterwards.

R. G. McClellan testified:

A. John Silbey says, "We have come to get you to take a few hundred dollars worth of stock in the Fox River Valley Railroad." I pretty readily consented to take $500 stock and mortgage 40 acres of land. Sawyer told me he had bought some mortgages in Illinois of the company's, and Prickett's among the rest, and they did not cost him over fifty-five cents on the dollar, from the fact they told me the road would certainly be built. Mr. Sibley wanted me to take a thousand dollars instead of five hundred, and said I ought to do it as they were all subscribing and helping liberally; he, Sibley, had taken five hundred in the Illinois division of the road, and had taken five hundred in the Wis-

consin, making him a thousand dollars; in the same conversation said W. A. McConnel had taken two or three thousand dollars in the Wisconsin division. This talk did not induce me to increase my subscription as I was some in debt, and would take five hundred and no more; I believed what they told me at the time, but afterwards when Belden was president he told me that John Silbey had not taken a dollar's worth of stock in the Wisconsin division of the road.

S. M. Stevens testified;

I objected to taking stock, but he said the road would be built within one year, and the road would pay for itself before the note would become due, and I would never have anything to pay; he said he had no farm, but had or was going to mortgage his village property for stock on the road. Sibley took my subscription for $500 and afterward I gave a mortgage.

J. S. Burroughs testified:

I was solicited to take stock in the Wisconsin division of the Fox River Valley Railroad. Mr. Conover, in conversation with him, frequently soliciting me to take mortgage stock, said mortgages would be drawn upon interest, but they (the company) would keep the interest upon the mortgages until they were liquidated, and all the mortgages they took were taken with that agreement, I did not take stock with Conover but was called upon by John Sibley. He said he was soliciting stock for the road. He spoke to me three or four times, and finally I saw him in the post-office at A. T. Brown's store. I think W. A. McConnel was present. He spoke to me again there and insisted very hard that I should take eight shares and mortgage land. He said he (Sibley) had taken five shares and I was able tot ake as much as he had, reiterating the same story that the road would

pay the interest, and dividends pay the stock. He at this time referred to Squire McConnell, wanting to know if he didn't think I was able. He said he did, and I was induced to take $500 in stock. I gave a mortgage and the mortgage is paid. Mr. Sawyer told me that himself, Barns and others had taken mortgages of the company at fifty cents on the dollar, and Prickett and Wodell were among them, and Wodell's, he said, was paid at two hundred and fifty dollars, or that he had agreed to take that amount.

On the part of the complainant, the testimony on the question of fraud was as follows:

Wm. A. McConnell testified,

That he took stock in the Road to the amount of $1,500; Conover and Parsons were there together. He was in Brown & Hill's store when he subscribed. Had no knowledge of there being any proposition to him to take or put his name down for any greater amount than he meant to take. He never signed but one list, and never signed for any greater amount than for $1,500. This subscription was a mortgage subscription, running ten years, at eight per cent., made in the fall of 1857. In the spring of 1858, he made an arrangement before the mortgage was given, to pay cash subscription. He was to pay $1,200, which sum he paid and received twelve shares of stock for it. He never made any arrangement with the Railroad Company that he should subscribe $1,500, and that they would receive in payment $1.000 or any less sum; that he never was in the employ of the Railroad Company, or anybody else; that he volunteered and went out and gave assistance in getting up the stock, but never received a shilling from the Compauy, or the promise of anything. That he sold his stock about November, 1866, to a gentleman in Burlington. He don't think he ever had

any conversation with Prickett; he knew Sibley. Sibley was with him a few days getting subscriptions. Witness was one of a committee appointed at a citizens' meeting to solicit subscriptions. Sibley, Wells and Brown were also on that committee.

On cross-examination, he said:

That in the fall of '57, some gentleman came from Milwaukee; his impression was that the President of the Road came down and took dinner with him; there were three men he thinks. The President was James Neelan, who formerly lived at Richmond; in 1857 he became President of the Road, and came down and made some very fine speeches, and told what they would do for *us* if we would take stock, and told us a great many things, and *these statements induced the people to take stock.*

We had a road which was called the "Fox River Road," and were very anxious to have an extension to Milwaukee.

(Pages 49 to 53 of printed record.)

William G. Parsons testified:

Did not take Prickett's subscription, but went down with the subscription book and took the mortgage. Prickett did not object to executing the mortgage, and made no statement in my presence that the amount was larger than he had subscribed. His wife objected, at first.

Page 69 of Record.

The substance of what was said at the time the mortgage was executed, related to the benefit they thought would accrue to Prickett and the people generally, through that section of the country, by having the road built. He did not state to Mrs. Prickett that the Railroad would make 30 per cent., and would give her and her family $600 a year always.

Such a statement was not made by any one in his presence.

(Page 70 of Record.)

His recollection is that Prickett did not object to executing the mortgage, but that Mrs. P. made some objection to it, and 'Squire Bennett, an acquaintance of theirs, and a resident of that county, done most of the talking. The substance of what was said, was that the road would be a great benefit to her as well as other residents in that vicinity.

(Page 72 of Record.)

John Sibley testified:

He did not take Prickett's subscription; does not know that he ever said a word to Prickett about the Railroad, or about subscribing; did not in any way influence, or seek to influence Mr. Prickett to make any subscription to the stock of this Company. He never told Prickett that he had mortgaged his house and lot to the Company in payment of stock, and never took any stock in that Company, but did take stock in the Fox River Valley Railroad Company, of Illinois, running to Richmond, prior to the fall of 1857, and that he paid the stock, which he thinks, amounted to $500; that he assisted in obtaining subscriptions to the Fox River Valley Railroad Company, of Wisconsin, at the instance and request of leading citizens and residents of Richmond and vicinity, but never at the reqest of the Railroad Company; never was paid by the Company; never received a cent.

(Pages 74 and 75 of Record.

The Wisconsin road was a continuation of the Illinois road. He told parties that he had taken stock in the Fox River Valley Railroad Company of Illinois, and that they should take stock to extend and complete the road.

(Page 77 of Record.)

IN THE

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, A. D. 1873.

EPHRAIM S. SAWYER,
Appellant.

vs.

HENRY PRICKETT, AND
CHARLOTTE PRICKETT,
Appellees.

No. 184.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF OF T. G. FROST, FOR APPELLEES.

Inter-Ocean [Beach & Barnard] Print, Chicago.

IN THE

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, A. D. 1873.

EPHRAIM S. SAWYER,
Appellant.
vs.
HENRY PRICKETT, AND
CHARLOTTE PRICKETT,
Appellees.

No. 184.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF ON THE PART OF APPELLEES.

The original bill in this case was filed on the 11th day of June, 1866, and was a bill for the foreclosure of a mortgage executed by Henry Prickett and Charlotte Prickett, his wife, the appellees to the Fox River Valley Railroad Company, on the first day of September, 1857, and recorded in the recorder's office of McHenry County, on the 4th day of January, A. D. 1858, and given to secure a certain promissory note for the sum of two thousand dollars, with eight per cent. per annum interest thereon, from the date of its execution.

This note and mortgage were given for the purpose of securing the payment of a certain subscription for stock

made by said Henry Prickett to said Fox River Valley Railroad Company, a corporation claimed by the appellant to have been organized under the laws of the State of Wisconsin.

This note and mortgage were assigned by said corporation to Caleb B. Barnes, on the 10th of June, 1858, and by said Barnes, on the 6th day of March, A. D. 1861, were again assigned to Ephraim S. Sawyer, the complainant in the original bill and the appellant in this court.

The premises embraced in the mortgage were occupied by the appellees as a homestead at the time of the execution of the mortgage and had been for many years previous thereto, and have been so occupied ever since.

The answer to the original bill sets up the homestead right of the parties, and also avers that the note and mortgage and the subscription which they were given to secure were obtained from the appellees by false and fraudulent representations on the part of the projectors, managing officers and agents of the corporation, and for that reason were not binding on the appellees; that the complainant was one of the officers of the company and was well acquainted with the manner in which the mortgage and note were procured at the time he took the assignment thereof.

The answer sets up various fraudulent artifices resorted to by the appellants for the purpose of securing said subscription and note and mortgage to secure the same, and shows that no stock was ever delivered to the appellees; that the building of the road was abandoned, and that the entire consideration for said subscription and note and mortgage failed.

The evidence upon the trial showed the execution of the note and mortgage, substantially as stated in the pleadings, except that there was no relinquishment of the homestead

exemption, and also showed the assignment to the complainant.

The testimony, on the part of the defendant below, showed two rival organizations attempting to claim the rights and franchises of the corporation, and that the company was really insolvent at the time the note and mortgage were executed and the subscription taken, and that the directors, officers and agents of one of these organizations, for the purpose of securing a debt claimed to be due them from the corporation, procured subscriptions to the company, and mortgages to secure the same, including the one in this case, by false representations with regard to the condition of the company, its capacity to build the road within a year or eighteen months, and the profitable character of the stock, and by the fraudulent pretext of large subscriptions made by different parties, neighbors of the defendants below—the appellees in this court—when in fact said subscriptions were, to a great extent, mere nominal subscriptions, or were made with an agreement and understanding that the actual sums, for which the subscribers were to be held responsible, were considerably less than the amount of the nominal subscriptions.

The testimony further showed that the building of the road was abandoned immediately after the mortgages and subscriptions were got in by the officers and parties engaged in procuring them; and no road was ever built, nor was any stock ever tendered or offered to the appellees.

The parties who procured, from the defendants below, the execution of the mortgage in question, represented to the defendants that the road would be built within a year or eighteen months, and the rolling stock would be upon the road within that time. That there would be no interest to pay upon the mortgage; that they would pay the in-

terest upon the mortgage, and that the dividends upon the stock would pay the principal of the mortgage debt before the same was due. They also proved, from the officers of the corporation, a written agreement, executed contemporaneously with the note and mortgage, by which the defendants were to be indemnified against the payment of any interest upon the mortgage.

Similar representations were made to other subscribers about the same time, and similar artifices were likewise practiced upon them, to induce them to make subscriptions and to make and execute notes and mortgages therefor. Upon this evidence, a decree dismissing the bill was made by the court below.

The sufficiency of this defense and of the evidence offered to establish it, presents in connection with the failure of the consideration for said note and mortgage, the principal question involved in this case. The validity of the mortgage and whether as executed and acknowledged, it was sufficient to divest the homestead right of the parties thereto, are also questions involved in the case and presented by the pleadings and evidence therein.

Upon the evidence in this case and embodied in the record, the appellees insist —

I.

That the note and mortgage in suit were procured from the defendants by fraud, and were therefore void, and could not be enforced, even for the benefit of Sawyer, the assignee, who cannot, upon the testimony, occupy the position of a *bona fide* holder for value, and without notice.

The testimony of Prickett, the defendant below, found upon pages 13, 14, 15, 16, 17, and 44, shows that the sub-

scription of the defendant below, and the note and mortgage in question were procured from Prickett and his wife by Mr. Conover and George Parsons. Sibley was also engaged in this same business. Conover was President and Parsons was Secretary of the company.

Other testimony in the case shows Conover to have been a prominent agent for the company and director therein.

After representing to the appellees the great enhancement in the value of their property by the building of the Railroad, they represented that the appellees should never have any thing to pay in case this subscription was signed and the mortgage given. That they would pay the interest and that the dividends upon the road would pay the principal. That at the time the mortgage ran out Prickett should be ahead. They represented to his wife that it would be an everlasting benefit to her to sign the mortgage. That the railroad would probably make thirty per cent. and it would give her and her family six hundred dollars a year always, (pages 13, 14, of printed record).

They made representations also as to certain subscriptions of prominent men living in the neighborhood of the appellees, as an inducement to obtain the subscription and mortgage, when in fact these subscriptions were accompanied by an understanding and agreement with the subscribers that the amount for which the subscribers should be actually held, should be considerably less than the nominal amount of such subscriptions.

The evidence on this point, to be sure, is not altogether clear and satisfactory, and is somewhat contradictory on the subject, but there is enough in the testimony to fairly justify the inference that some artifice of this kind was resorted to by the managing officers and agents of the corpo-

ration with the view of practicing deception and imposition upon the subscribers, including the appellees.

The testimony of Alexander Gardner (pages 18 to 22 inclusive,) shows how these officers dealt with him, and it also appears from his testimony that McConnell's name stood upon the books for one thousand or fifteen hundred dollars, when he only took five hundred dollars of stock. They represented to Gardner also that the road would be built within a year. That within a short time there would be twelve miles completed. That there would be a dividend coming from that part of the road. That if the subscribers did not want to take the dividend it would be applied upon their subscriptions. It appears also from the testimony of Prickett, upon page 15 of the printed record, that the road was never built, and that nothing further was done after they got the mortgages all in.

The testimony of George Andrews upon page 24, is to the same effect. He says they did a little grading after they took the mortgages, and that was all.

Jonathan Imerson, whose testimony is found on pages 25 and 26 of the printed record, testifies that these officers represented to him that the road would be finished in from one to two years; two years at farthest. After stating the great benefit it would be to him, representing that it was a grand thing, and a money making thing, they stated that if he subscribed he would have nothing to pay; and said to him, "You sign for this [which was for the sum of $1,000] "and by the time, in seven or eight years, it will be paid "up. The whole thing and the company will pay the in- "terest right along, and you will have nothing to pay, and "by signing this you will be making money the whole "time."

Imerson, who resided in the same county with appellees,

namely McHenry county, Ill., also testifies that the same representations were made to the other farmers in the community. He also states that Sawyer, the complainant, was a director and contractor in the company, and that after the execution of the mortgages little or nothing was done towards the completion of the road.

The testimony of J. C. McKesson also shows that Sawyer was a director in the company. That there were two rival organizations; that he himself was a subscriber for five hundred dollars, but his subscription was changed, and made to represent fifteen hundred dollars, he stating that he did not care what the amount was, as he had set himself down for five hundred dollars only.

The obvious object of changing it to the sum of fifteen hundred dollars, as is clearly inferrible from all the testimony, was to produce an effect in obtaining subscriptions from other parties, and was an artifice clearly indicative of fraud. (Page 28).

The deposition of Herman Gibbs, page 45, shows that McKesson and Barnes, to whom the mortgage in question was assigned, and who assigned the same to the complainant, solicited and took mortgages for the company. That Conover was the principal agent in soliciting stock for the road, and was a director; that Sibley was also engaged in soliciting stock for the company, sometimes with Conover and sometimes alone, and that Sawyer was a director, while Sawyer himself, pages 36 and 37, testifies to having been engaged in taking subscriptions, and that he authorized Barnes to take the mortgages in lieu of the company's obligation to Sawyer, in trust for Sawyer and others, because they thought that the company's obligation was rather a poor thing to collect, and that they should get something on the mortgages.

The deposition of D. A. Potter, second, also shows a resort to the fraudulent artifice of sham subscriptions, or subscriptions taken for a nominal sum greater than the amount which, by the understanding between the parties, was to be actually paid. He says Conover urged Wodell and Whitney to take stock, and they thought they could take only five hundred dollars each, and Whitney went out of the store, and Conover said to Wodell: "I want you to take one "thousand dollars, for Whitney and others won't take any "more than you, as you are a merchant here, and if you "will subscribe one thousand dollars, when you give the "mortgage I, Conover, agree that it shall be made for five "hundred dollars." That six months or a year after the stock was subscribed it was generally spoken of as "buncombe stock."

The testimony of R. G. McClellan, page 47, and J. S. Burrows, page 49, show that Sawyer stated that he had bought mortgages, including Prickett's, in connection with Barnes' and others, at 50 or 55 cents on the dollar, and that he had agreed to take, for Wodell's, $250.

Wm. A. McConnell, as his deposition, page 51, shows, adjusted his $1,500 subscription at $1,200, although he seems to speak of the arrangement as an agreement subsequent to the subscription.

The testimony of Peter Forbes, pages 55 to 68, throws considerable light upon the manner in which all the business of the company, especially that touching the obtaining the subscriptions was carried forward; shows the two organizations claiming to be the corporation, by both of which books were opened and stock procured. It shows the questionable character of the enterprise, and strongly tends to impeach its *bona fide* character, both in its origin and in its prosecution. Forbes was one of the commissioners or cor-

porators named in the charter of the company, and was familiar with its origin and its entire history. He states, upon pages 57 and 58, the facts touching the two organizations, and also states that the organization, adverse to that at whose instance the mortgage in question was procured, met and formally opened subscription books, and claimed to be the company, and that a majority of the directors met and acted under that organization, and took subscriptions for stock. Conover, he says, was director, and Parsons secretary of the company. Sawyer, the complainant, was also a director, but ceased, as Forbes thinks, to be a director, in the spring of 1857.

It appears from the testimony of Philo Belden, the president of the company, that Sawyer, the complainant, was first elected director in February, 1855, and continued director until the 25th of March, 1857.

Parsons, the former secretary, swears that Sawyer was elected on the 21st day of January, 1857—the last time, that he was elected director for one year, but that he resigned his office on the 25th of March, 1857. (Pages 74 and 83, printed record.)

Belden also swears, page 87, that Conover was president of the company in 1857, and prior to that Mr. Forbes.

Forbes' testimony farther shows that the mortgages assigned to Barnes were divided up between Sawyer, Forbes and others, to discharge their claims against the company, and that Sawyer got his (page 65) while he was a director, and that Forbes got his mortgages also while he was a director. That he and Sawyer knew when these mortgages were being taken, and had frequent conversations on the subject, and that Sawyer exerted himself to get parties to give mortgages. The written assignment of the mortgages to Barnes, June 10th, 1858, and the assignment of the

Prickett mortgage to Sawyer, March, 1861, appear on pages 41, 42 and 43 of the printed record, and Forbes' testimony shows (page 67), that the assignment to Barnes of these mortgages was made in trust for the benefit of these parties who were directors in the company, to secure them for liabilities incurred while they were such directors.

It is unnecessary to refer more in detail to the testimony, showing the representations that were made to various parties, and at different times, of a character similar to those made to Prickett. These various representations, made about the same time, for a similar purpose as those made to Prickett, in order to obtain subscriptions and mortgages in security therefor, from the farmers in the vicinity of the road, and in McHenry county, where Prickett resided, were admissible upon the question of intent, and as indicative of a fraudulent purpose, on the part of the officers of the company.

This evidence also showed that there was a general scheme of fraud, originated by, and participated in by the officers, and managing agents of the corporation; that they acted in concert and conspired together, to produce upon the mind of the community, the false impression that the road was to be immediately built and put in operation, was to be a great success, and would put a great deal of money in the pockets of the stockholders, and add largely to the value of their real estate, with the view, and for the purpose of thereby securing from the farmers of McHenry county, large subscriptions for the stock of the company, and to secure the same by even mortgaging their homesteads for the payment of the same, not with any expectation on the part of the officers, and directors and agents of the company, of building the road, but for the purpose of securing the payment of debts and liabilities

against the company, which it had no means to discharge, and the only prospect of securing which, was to make the amount out of the mortagages thus fraudulently obtained.

The testimony of Philo Belden, former president of the company, and a witness offered on behalf of the complainant below, and the appellant in this court shows that the entire amount of money and mortgages only reached about one hundred thousand dollars, even as late as January 21st, 1863, and that the estimated cost of the completion of the road at that time, was over four hundred and eighty-five thousand dollars. Up to the 15th of January, 1862, the amount of money which was received, was less than forty thousand dollars. That of good, unpaid subscriptions prior to 1858, there was not to exceed twenty thousand dollars. The entire expenditures of the company were one hundred and fifty thousand dollars. (Pages 84, 86, 87.) It also appears from the testimony of other witnesses, that money was borrowed by the directors, upon their individual credit, and used for the benefit of the company, prior to the giving of these farm mortgages. It also appears from the testimony of Belden, (pages 87 and 88, printed record), that on the 23d day of January, 1857, some seven months prior to the execution of the mortgage in question, that the treasurer of the company was instructed to pay up these out-standing liabilities of the company, on the notes of the board of directors, as fast as possible, from any available means in the treasury, and on the 10th day of June, 1858, about nine months after the execution of these mortgages, as the written assignment shows, (page 42) these same mortgages, including the Prickett mortgage, in controversy, were turned over to Barnes, and, as the subsequent testimony shows, for the express purpose of paying

off these old debts, debts due from the Company to the directors, and which, it is fairly inferable, there were no means in the treasury to discharge, as, had there been, the directors would have been paid therefrom pursuant to the resolution passed by the board.

In short, at the time the directors were procuring these mortgages, the Company was bankrupt, and the directors knew it. They secured the mortgages ostensibly for the purpose of building the road, but really for the purpose of paying themselves for the debts and liabilities which they had incurred and which it was impossible for the Company to pay.

The representations made by Conover and the other directors, in order to obtain the mortgages, were not, perhaps, of that character which ordinarily, if made in good faith, if they had afterwards turned out to be false, would have constituted a sufficient basis to sustain an action for fraud, or amounted to a defense to an action at law, brought upon the subscription or the note given therefor.

Had there been no bad faith on the part of the directors, even though the representations had been untrue and unauthorized, they could not have been compelled to make them good. But in this case there was the guilty knowledge on the part of the directors. They knew that the Company was bankrupt, and fraudulently concealed its real condition. They intentionally produced, upon the minds of the parties of whom they solicited subscriptions and mortgages to build the road, the false impression that the Company was able to build and would build the road within a year or eighteen months, and within a year or two the rolling stock would be upon the road, and the road in full operation. It matters little by what representations, concealments and artifices they misled and deceived the

subscribers and the community generally. They intended to deceive and defraud them, and they accomplished their purpose.

The Company was in its death struggle, and they knew it. Under the pretext of raising money to build the road, they were obtaining subscriptions and mortgages, which they cashed at fifty and eighty cents on the dollar, as the case might be, and put the money in their own pockets to discharge real or pretended claims, it matters little which, held by them against the Company.

The entire scheme of obtaining these subscriptions and mortgages was a palpable fraud, a mere "confidence game," and in various ways the fraud is made apparent. The concealment of the real facts in the case, and the real condition of the Company, and of the real purpose for which the mortgages were obtained, and the representations made, *necessarily implying*, the sound financial condition of the Company and its ability to fully complete the road within eighteen months; the artifice resorted to of sham subscriptions, or subscriptions for a larger nominal sum than was actually to be paid, and exciting by these fraudulent means unfounded hopes in the minds of the subscribers of large pecuniary benefits to accrue from their subscriptions, present a case of outrageous conspiracy and indicate a gigantic swindle, attempted upon unwitting victims, entirely ignorant of the real truth of the matter and of the real purpose and design of these directors, and which, had the subscribers known, would have prevented these subscriptions from being taken and the mortgages from being executed.

Sawyer, the complainant, cannot sustain himself as an innocent holder of the paper. In the first place, a palpable fraud, in obtaining the same, having been established, the

presumption, ordinarily attaching to the assignment of commercial paper, is rebutted, and the burden is thrown upon the complainant, of affirmatively establishing the fact, if such is the fact, that he was a *bona fide* purchaser.

His own testimony fails to establish this. It appears, it is true, that the mortgage was turned over to him to secure a debt, but he had been for a long time connected with the company as an officer and director; had been himself engaged in soliciting mortgages and subscriptions. His testimony (page 31) shows that he was personally cognizant of the understanding as to interest, &c., at the time the mortgages were taken and that he was informed by others of the representations that were being made when the mortgages were procured. He had not only been a director but was also a creditor of the company, and was anxious to secure payment of his debt; he was acting in concert with the other directors, who had similar claims, and he himself engaged in the business of soliciting mortgages, and ultimately reaped the fruit of the fraud which had been practiced, and secured, in connection with the other directors, an assignment of these mortgages to Barnes, in trust, and as a portion of his distributive share took the Pickett mortgage in question, by common consent of the parties interested, and by a written assignment from Barnes, the trustee. The fact of these representations made to subscribers was notorious throughout the whole community. Sawyer, even if a stranger to the corporation, could hardly have been ignorant of them, and his intimate connection with the company as director, creditor and agent, makes it morally certain that he must have known all about the manner in which the mortgages were obtained, the means used to secure them, and the real purpose for which they were, by the directors, actually obtained.

At all events, he does not prove his innocence or swear that he had no notice of these matters, and his testimony does not rebut the presumption of bad faith, with which he is chargeable, after evidence showing that the note was originally obtained by fraud, and fraudulently put in circulation.

II.

There was an entire failure of consideration for which the note and mortgage in question were executed.

The actual consideration for which the note and mortgage were given was in the circumstances and upon the representations that accompanied their execution—a railroad from Richmond to Milwaukee, fully completed and equipped and in running order, within eighteen months or two years, giving increased value to the lands of the subscribers and bringing in a large annual revenue upon their stock, and re-inbursing them to the full extent of their subscriptions. Instead of this they received absolutely nothing for their subscriptions. No road was ever built, nor was any road really expected or intended to be built by the parties procuring the subscriptions.

The testimony shows, that as soon as the mortgages were got in, little or no further work was done upon the road. The entire enterprise was abandoned, from that time forward. The company was all the time hopelessly insolvent, and the directors knew it when they got the mortgages. This, moreover, was not the case of unauthorized representations, made by agents of the corporation, unknown to the corporate authorities, without sanction by them. The entire scheme of getting these mortgages, and the fraudulent means used for the purpose of obtaining them, were originated and carried forward by the directors them-

selves, who used the corporation for their own private purposes, and, under cover of the corporate name, and ostensibly for the legitimate purpose of building a railroad, got hold of the mortgages and notes of the subscribers, for no other purpose except to use them to pay off and discharge their own claims against the company.

The suit is brought, not by the corporation, but by one of the original directors who was evidently acting in concert with the other directors in devising and carrying forward a scheme to secure the payment of their debts by getting securities out of third parties, ostensibly for a totally different purpose.

For all the purposes of this case, the corporation may be laid entirely out of view, — neither their rights, nor the right of any one legitimately representing them, are involved in the controversy. The party for whose benefit, in connection with that of the other directors, the note and mortgage given in suit were originally obtained, and into whose hands it eventually came, in accordance with the original design of the transaction, is the party who prosecuted the foreclosure suit, and who is the appellant in this case.

It is, to say the least, questionable whether the directors had a right thus to deal with the property of a corporation, and to appropriate a trust fund, like that of subscriptions to stock to the payment of the private debts of the directors against the company. And, it is equally questionable whether a title, derived by the complainant through an assignment made for such a purpose, under the authority of the directors, can be sustained as valid in a court of equity.

III.

Again the original bill in this case could not be maintained for the reason that in view of the whole case as developed by the evidence, there was no sufficient ground to justify the interposition of a court of Equity.

A party asking for equity must do equity. He must come into court innocent of any wrong doing on his own part. If in the circumstances injustice would be occasioned to innocent parties by granting the prayer of the bill, a court of Equity will not interfere; and even though where the contract is fully executed, the court would not set aside what has been done, or allow a party to recover what he has paid; still so long as the contract is so far executory that the aid of a court of Equity is essential in order to enforce it, if any equitable considerations appear from the evidence against granting the relief prayed for, and injustice would be done by granting it, the court may refuse to interfere. In fact the complainant is bound to present to the court a case in all its features, good in conscience and in right, before he can call upon a court of Equity for help, and this is not the character of the case disclosed by the record before the court.

The following authorities fully illustrate and sustain our position:

Story's Equity Jurisprudence, 10th Ed., Vol. 1, Section 769. "It requires a much less strength of case on the part "of the defendant to resist a bill to perform a contract "than it does on the part of the plaintiff to maintain a "bill to enforce a specific performance. * * * * * "An agreement to be entitled to be carried into specific "performance ought, as we have seen, to be certain, fair "and just in all its parts. Courts of Equity will not decree

"a specific performance in case of fraud or mistake, or of "hard and unconscionable bargains, or when the decree "would produce injustice, * * * and generally not "in any case where such a decree would be inequita- "ble under all the circumstances."

Again, Section 770: "Courts of Equity do not stop "here, for they will let in the defendant to defend him- "self by evidence to resist a decree where the plaintiff "would not always be permitted to establish his case by "the like evidence. Thus, for instance, Courts of Equity "will allow the defendant to show that by fraud, accident, "or mistake, the thing bought is different from what he "intended. * * * * The ground of this doctrine is "that which has been already alluded to, that Courts of "Equity ought not to be active in enforcing claims which "are not under the actual circumstances just as between "the parties."

In the case of *Lockridge* v. *Foster*, 4 Scammon, 573, the Court say, in discussing a similar question: "On the prin- "ciples of equity and justice, the contract to be obligatory "must be justly and fairly made. The contracting parties are "bound to deal honestly and act in good faith with each "other. There should be a reciprocity of candor and fair- "ness. Both should have equal knowledge concerning the "subject matter of the contract; especially ought all the "facts and circumstances which are likely to influence their "action, to be made known. If they have not mutually "this knowledge, nor the same means of obtaining it, it is "then a duty incumbent on the one having the superior "information to disclose it to the other. In making the "disclosure he is bound to act in good faith, and with a "strict regard to truth. If he makes false representations "respecting material facts, or intentionally conceals or sup-

"presses them, he acts fraudulently, and renders himself "responsible for the consequences which may result. Fraud "may consist as well in a *supressio veri* as in a *suggestio* "*falsi;* for in either case it may operate to the injury of "the innocent party. A false representation by the vendor "which influences the conduct of the other party, and in- "duces him to make the purchase, will vitiate and avoid "the contract, and in making the representation it is im- "material whether he knows it to be false or not, for the "consequences are the same to the vendee. If he relies on "the truth of the declaration, he is equally imposed on and "injured, and ought to have redress from the one who "has been the cause of the injury. So a suppression or "concealment by the vendor of facts, which, if known to "the vendee, would have the effect to prevent him from "making the purchase, will, in equity, equally vitiate the "contract. A Court of Equity will not enforce and carry "into effect contracts thus unfairly and fraudulently made."

In the case of *Bolknap* v. *Seeley*, 14 N. Y., 144, it was held by the Court of Appeals of New York, that a court of equity would on the application of the vendee rescind an executory contract for the purchase of land, on the ground of mistake in the quantity, notwithstanding the premises were all described by metes and bounds, and the terms "more or less," were added after a statement of the quantity, where the mistake on the part of the purchaser was caused by the misrepresentations of the vendor, although not fraudulently made, where the mistake so essentially affected the value of the premises that the contract would not have been made had it not existed. Judge COMSTOCK, in the conclusion of his opinion says:

"I am of opinion that the judgment should be affirmed, "and I put my conclusion on the grounds that the contract is

"yet executory," that there was an actual misrepresenta-
"tion of the quantity of land, although not fraudulently
"made, and that the mistake induced thereby so essentially
"affected the agreement that upon the settled maxims of
"equity it ought to be annulled."

Again, in the case of *McArtee* v. *Engart*, 13 Illinois, 248, the Supreme Court of Illinois lay down a principle bearing upon the point now under consideration, in the following language:

"The difference between the value of the land and the
"price for which it was sold, would not, of itself, justify the
"interposition of a court of equity, except as to creditors.
"A man may consult his own wishes in the disposition of
"his property. He may dispose of it on such terms and
"for such prices as he pleases. If he meets a purchaser
"on equal ground and parts with his estate for less than it
"is worth, he has no claim to relief in equity. He must
"abide the consequences of an injudicious bargain, if vol-
"untarily and fairly made. It is not the province of a
"court to inquire whether the contract will operate to his
"advantage or prejudice. It will not interfere with the
"sale unless there has been some fraud, mistake, or undue
"influence. As a general principle, inadequacy of price is
"not a sufficient ground for setting aside a conveyance of
"property. A court of equity in the exercise of a sound
"discretion may refuse to decree the specific performance
"of an agreement founded on an insufficient considera-
"tion; but it will not rescind an executed contract merely
"because the consideration was inadequate. *Osgood* v.
"*Franklin*, 2 Johns. C. R. I.; *Law* v. *Bouchard*, 8 Ves.
"133: *Wood* v. *Abrey*, 3 Mad. Rep. 417; *Naylor* v.
"*Winch*, 1 Simons & Stuart, 555.

"There may be cases where the court will interfere on

" the ground that the price is so inadequate as to afford de-
" cisive evidence of fraud or undue influence. But to pro-
" duce such a result the inequality must be so gross and
" palpable and as to shock the conscience and convince the
" judgment that there has been imposition or oppression."

IV.

Complainant had no right to the relief prayed for, for the reason that the premises, covered by the mortgage sought to be foreclosed, constituted, at the time of its execution and for a long time previous thereto, the homestead of the defendants, and this statutory exemption was not released by the mortgage.

Under the statute of Illinois, and the decisions thereupon, a formal release of the homestead exemption, executed and acknowledged by the husband and wife, is essential to divest the homestead right. An ordinary deed, regularly acknowledged and sufficient to convey the fee to any other property, will not release the homestead exemption. A formal and express release of this right must be embodied in said mortgage, and the fact of the execution of the release of the exemption must appear in the certificate of acknowledgement. This mortgage was entirely defective in this respect, there being no release of the homestead exemption in the body of the mortgage, nor any reference to it in the acknowledgment. In these circumstances the homestead right could not be extinguished, even by a decree of the court, nor could the grantors in a deed or mortgage of a homestead, thus acknowledged, be ousted by the grantee in an action of ejectment. The following references to the statute, and the decisions of the Supreme Court of Illinois, on this subject, will effectually settle this

question. By the Act of February 11th, 1851 (page 25 of the laws of 1851) it is provided:

"That in addition to the property now exempt by law "from sale under execution, there shall be exempt from "levy and forced sale, under any process or order from any "court of law or equity in this State, for debts contracted "from and after the fourth day of July, A. D. 1851, the "lot of ground and the buildings thereon occupied as a "residence and owned by the debtor, being a householder "and having a family, to the value of one thousand dollars. "Such exemption shall continue after the death of such "householder, for the benefit of the widow and family, "some or one of them continuing to occupy such home-"stead until the youngest child shall become twenty-one "years of age, and until the death of such widow; and no "release or waiver of such exemption shall be valid, unless "the same shall be in writing, subscribed by such house-"holder and acknowledged in the same manner as convey-"ances of real estate, are by law required to be acknowl-"edged."

And by the Act of February 17th, 1857 (Laws of 1857, page 119) it is further enacted that "the first section of "'An Act to Exempt Homesteads from Sale on Execution, "'Approved February 11, 1851,' be amended by inserting, "after the word 'subscribed by such householder,' the "words, 'and his wife, if he have one,' it being the object "of this act to require, in all cases, the signature and ac-"knowledgment of the wife as conditions to the alienation of the homestead."

In the case of *Patterson* v. *Kreig*, 29 Ill., 514, the construction of these statutes was brought in review before the Supreme Court of the State of Illinois, in reference to a mortgage executed by Kreig and his wife, and duly ac-

knowledged by each of them, in the ordinary and usual form, except that there was no formal release of the homestead right embodied in the mortgage. Ejectment was brought upon the mortgage by the grantee, and was held not maintainable, because the mortgage was not executed and acknowledged in the manner required by the homestead act, particularly by the amendatory act, in order to divest the homestead right. The following language of the opinion found upon page 519, clearly determines the effect and construction of the statute, viz:

"This amendment does something more than merely "make it necessary for the wife to join in the release of "the homestead right. It goes further, and cuts up by the "roots all alienations of the homestead in which she does "not sign and acknowledge a release of the homestead "right. This is made a condition to the validity of all "alienations of the homestead, whether by deed of bargain "and sale or mortgage. There was no such release of the "homestead right signed and acknowledged by the wife, "accompanying this mortgage, and without that, this statute "in substance declares it to be invalid, and this reduces the "case to the simple question: Can the plaintiff recover "upon an invalid conveyance? This question is so easy "that it answers itself. By annexing this condition, the "legislature determined that it should not be binding in law "without it, and consequently it creates no rights as a con-"veyance, and it is only as a conveyance that the plaintiff "treats it when he attempts to recover upon it in eject-"ment."

In the case of *Green* v. *Marks*, 25th Illinois, it was held, that a judgment lien did not attach to the homestead; that its exemption from levy and sale placed it beyond the operation of a lien. It was also held that while it remained ex-

empt, it was in the same situation as though the judgment had never existed, and the same doctrine is re-affirmed in case of *Bliss* v. *Clark*, 39th Illinois, 595. The principles decided in those cases, have been repeatedly settled and re-affirmed by the Supreme Court of the State of Illinois.

Herring v. *Quimby*, 31st Ill., 152.
White v. *Clark*, 36th Ill., 285.

Where the homestead is of greater value than one thousand dollars, it is nevertheless protected by the homestead act, which provides the course of proceeding in such a case. In such case, the homestead is to be set off in the manner provided by the act, before any steps can be taken to collect the judgment from the residue of the premises. The act as construed by the Supreme Court of the State, protects the parties claiming a homestead from any divestiture or extinguishment of the homestead right, even by a decree of foreclosure.

In the case of *McDonald* v. *Crandall*, 43d Illinois, 231, it was held, that although a conveyance executed and acknowledged in the ordinary form, without a formal release of the homestead right was operative to pass the fee, that the power to acquire possession under the deed was, nevertheless, suspended, until the homestead was abandoned or extinguished by a surrender of possession to the grantee. The mortgage in this case covering the homestead, it was under the laws of the State of Illinois, therefore, inoperative to confer any right of possession, or to give authority to the court to enforce a sale by decree, and divest the parties of possession of their homestead, for the reason that there was no formal release of the homestead embodied in the mortgage, or acknowledged by the husband or wife, and this constituted therefore of itself an insuperable obstacle to the relief prayed for by the bill.

The bill in this case was not so framed as to entitle the complainant to a decree upon the evidence for a foreclosure subject to the homestead right. But the bill entirely ignored any such right, and prayed for an absolute foreclosure irrespective thereof. The answer set up the facts, showing the exemption right, and the complainant took issue by his replication. On this issue the parties went to trial, and the case was heard and disposed of without any request, so far as the record discloses on the part of the appellant, for a decree of foreclosure, saving and subject to the homestead exemption, secured by the Statute of the State of Illinois.

V.

The objections taken to the testimony in the Court below, by the counsel for the complainont, show no error in the ruling of the Court, for the following reasons:

First. The objections were of two general a character to enable the appellant to assign error upon the rulings of Court in reference thereto. The objection and exception taken should have specifically pointed out the evidence objected to, and distinctly stated the grounds of objection. A general objection to evidence, or to the charge of a Court, is not available to a party upon error.

McNitt v. *Turner*, 16 Wallace, 362.

Second. So far as the objections were intended to be made to the proof of false representations made to other parties about the same time as those made to the defendants, and relating to the same subject matter, the objections were not tenable. The evidence was competent, and was properly received. The true rule on this point is laid down in the case of

Cary v. *Hotailing*, 1st Hill, 316,

in the following language, viz.:

"On questions of intend to defraud, other acts similar to "the offence charged, done at or about the same time, or "when the same motive to offend may reasonably be "supposed to have existed, as that which is in issue are "admissible with a view to the *quo animo*. The case of "fraud is among the few exceptions to the general rule, "that other offences of the accused are not relevant to "establish the main charge."

To the same effect is the case of *Hall* v. *Naylor*, 18 N. Y., 588.

These different acts, artifices and representations, of these directors to different parties, and to various farmers of McHenry county, about the same time, were part and parcel of one general scheme of fraud and deception, and they were all admissible as indicative of the *quo animo*, and fraudulent purpose on the part of the officers of the company, in the means used by them in obtaining subscriptions to stock and mortgage securities therefor.

VI.

The subscription in this case, and the note and mortgage given to secure it, were accompanied by a written contract on the part of the company, bearing the same date as the note and mortgage, and executed at the same time, to the effect, that no interest should be paid upon the note and mortgage, and indemnifying the defendant, Henry Prickett, against payment of the same in case of an assignment or transfer of the note and mortgage, which did not fully mature short of ten years.

This agreement, being executed at the same time with the note and mortgage, and in reference to the same subject matter, constituted with the note and mortgage one

transaction, and is to be construed in precisely the same manner as though the provisions of each separate paper were all embodied in one instrument. A conditional agreement or subscription for stock, being contrary to the policy of the statute, has been repeatedly held, by courts of high authority, to be void, as in necessary conflict with the provisions and policy of the law or charter of incorporation.

Fort Edward & Fort Miller Plank Road Company v. *Payne*, 15 N. Y. (Court of Appeals), 583—*Troy & Boston R. R. Co.* v. *Tibbits*, 18 Barbour, 297.

Where each party is *particeps criminis*, the court will not aid either as against the other, but will leave them where they found them. This doctrine was held in case of *Miller* v. *Markle*, 21 Ills., 152, where the court held that he complainant was not entitled to a decree for the foreclosure of a mortgage executed in fraud of creditors; and they say, in reference to this doctrine:

"The rule we have accepted seems best calculated to "frustrate the designs of parties who engage in transa ctions "of a fraudulent character—saying to them most emphat- "ically, keep what you have got, be it notes or mortgages, "but seek not, nor aid to enforce the one or the other; or, "on the other hand, to relieve against them. If an agree- "ment be executed, this court will not rescind it; if exec- "utory, this court will not aid in its execution."

The defendants in this case, however, were rather in the position of victims, like parties contracting to pay usurious interest, and this furnishes an additional argument against the enforcement, by foreclosure, of an illegal security. At all events, the case, upon the evidence, presents marked features of fraud and oppression, upon the rights of the defendants.

The case of the complainant is not of a character to entitle it to the fostering care and protectionof a court of equity.

And we submit, in conclusion, that the decree of the court below was eminently just, and in conformity with the established rules of equity in the premises and should be affirmed.

T. G. FROST,

of Miller and Frost, Attorney

and of Counsel for Appellees.